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Court File No.: T-306-22

FEDERAL COURT

BETWEEN:

CANADIAN FRONTLINE NURSES and KRISTEN NAGLE

Applicants/Moving Parties

and

ATTORNEY GENERAL OF CANADA

Respondent/Responding Party

**MOTION RECORD OF THE MOVING PARTY APPLICANTS
(AMENDMENT OF NOTICE OF APPLICATION)**

March 29, 2022

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FEDERAL COURT

BETWEEN:

CANADIAN FRONTLINE NURSES and KRISTEN NAGLE

Applicants/Moving Parties

and

ATTORNEY GENERAL OF CANADA

Respondent/Responding Party

NOTICE OF MOTION

TAKE NOTICE THAT the Applicants, Canadian Frontline Nurses and Kristen Nagle will make a motion to the Federal Court under rule 369 of the *Federal Courts Rules*.

THE MOTION IS FOR

1. Leave to amend the Notice of Application in the form set out in Schedule “A”.
2. Costs of this motion.

THE GROUNDS FOR THE MOTION ARE:

3. The Respondent opposes the amendments being sought.

4. The amendments sought are for the purpose of determining the real questions in controversy between the parties.
5. The amendments sought in large part deal with the *Canadian Charter of Rights and Freedoms* (“*Charter*”) grounds to be argued. The Respondent has notice of the *Charter* grounds the Applicants seek to raise by virtue of the Applicant’s Notice of Constitutional Question which was served the day after the Application was issued. However, the Applicant is required to amend the Notice of the Application if it wishes to argue these grounds at the hearing.
6. The Applicants in T-316-22, T-347-22 and particularly T-382-22 have raised the same grounds as those being raised in the Applicant’s Notice of Constitutional Question and the proposed Amended Notice of Application. At this time, it is this Court’s intention is for this Application to be heard concurrently or consecutively with T-316-22, T-347-22 and T-382-22.
7. Allowing the amendments will not result in an injustice to the Respondent.
8. Rules 3, 75(1), 369, 400(3), and 401 of the *Federal Court Rules*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

9. The proposed Amended Notice of Application (Schedule “A” to this Notice of Motion)
10. The Affidavit of Simon Sigler, sworn March 28, 2022.

11. The Applicants' Bill of Costs.

March 29, 2022



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SCHEDULE "A"

Court File No.: T-306-22

FEDERAL COURT

BETWEEN:

CANADIAN FRONTLINE NURSES AND KRISTEN NAGLE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER SECTIONS 18 AND 18.1 OF THE *FEDERAL COURTS ACT***AMENDED NOTICE OF APPLICATION**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Suite 200, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 17, 2022

Issued by: _____

Address of local office:

180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

TO: **THE ADMINISTRATOR**
Federal Court

AND TO: **THE ATTORNEY GENERAL OF CANADA**
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~~(service to be effected by filing with the Registry pursuant to s. 133 of the *Federal Court Rules* and s. 48 of the *Federal Courts Act*)~~

Application

1. This is an application for judicial review in respect of the Order in Council PC Number: 2022-106 proclamation of a public order emergency issued February 14, 2022 (the “Public Order Emergency Proclamation”) pursuant to subsection 17(1) of the *Emergencies Act*, RSC 1985, c 22 (4th Supp) (the “*Emergencies Act*”).

The applicant makes application for:

2. An Order, pursuant to Rule 317 of the *Federal Courts Rules* for production of all Orders in Council, minutes of meetings, cabinet submissions, memoranda, agreements and constituting documents relating to the Public Order Emergency Proclamation.
3. A declaration that the Respondent acted without jurisdiction or acted beyond its jurisdiction in issuing the Public Order Emergency Proclamation.
4. A declaration that the Public Order Emergency Proclamation violates the *Canadian Bill of Rights*, SC 1960, c 44 (the “*Canadian Bill of Rights*”), including the right of enjoyment of property and the right not to be deprived thereof except by due process of law.
5. A declaration, pursuant to section 52 of the *Constitution Act 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11 (the “*Constitution Act 1982*”), that the Public Order Emergency Proclamation is inconsistent with sections 2(b), (c), (d), 7, 8, 9, and 11 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”) and not justified under section 1 of *Charter*.

6. A declaration that the Public Order Emergency Proclamation is unlawful and/or invalid.
- ~~7. An interim stay of the Public Order Emergency Proclamation and any regulations, orders or other measures issued or implemented pursuant to the Public Order Emergency Proclamation until this Application is heard on its merits.~~
8. An Order quashing the Public Order Emergency Proclamation and any regulations, orders, or other measures issued or implemented pursuant to the Public Order Emergency Proclamation.
9. Leave or an Order pursuant to Rule 302, if required, for this application for judicial review to include any regulations, orders, or other measures issued or implemented pursuant to the Public Order Emergency Proclamation, including, but not limited to, P.C. 2022-107, the *Emergency Measures Regulations* and P.C. 2022-108, the *Emergency Economic Measures Order*.
10. A writ of prohibition prohibiting the Respondent from issuing further public order emergency proclamations in the absence of a “public order emergency” as defined in the *Emergencies Act*, which definition is not met in the current circumstances.
11. Costs of this Application on a substantial indemnity basis or in an amount that provides full indemnity.
12. Such further and other relief as this Honourable Court deems just.

The grounds for the application are:

The parties to this Application

13. The Applicant, Canadian Frontline Nurses (“CFN”), is a not-for-profit corporation duly incorporated under the *Canada Not-for-profit Corporations Act*. CFN is a proud advocate of medical freedom and its mission is to unite nurses across Canada, educate the public and ensure that Canadian healthcare reflects the highest ethical standards.

14. The Applicant, Kristen Nagle (“Nagle”) is a Canadian citizen residing in Ontario.

15. Nagle is a registered nurse and a member and director of CFN.

16. CFN and Nagle are opposed to unreasonable COVID-19 related mandates and restrictions that have been implemented by various levels of Canadian governments.

17. The Respondents are the Governor in Council, the Privy Council, and Her Excellency the Governor General in Council, all acting on behalf of Her Majesty the Queen (in right of Canada), and all represented by the named Respondent, the Attorney General of Canada.

Background: The Applicants’ Participation in The Freedom Convoy 2022 Protests in Ottawa

18. Starting on January 22, 2022, convoys of vehicles began to form and travel towards Ottawa. Ultimately, several convoys across Canada formed and thousands of vehicles converged on Ottawa on or about January 28, 2022, and the days that followed in support of what has been described and known as the “Freedom Convoy 2022 Protest”.

19. The Freedom Convoy 2022 Protest in Ottawa was ongoing as of the date of the Public Order Emergency Proclamation and continues as of the date of this Application.
20. The Freedom Convoy 2022 Protest in Ottawa is a peaceful demonstration based on the principles of unity and respect for all Canadians. One of the goals of the Freedom Convoy 2022 movement in Ottawa is to increase public awareness of the issues related to various levels of Canadian government implementation of COVID-19 mandates and restrictions, as well as to encourage these governments to repeal the divisive and unreasonable COVID-19 related mandates and restrictions.
21. The organizers of the Freedom Convoy 2022 movement have also called on the political class to refrain from indiscriminately labelling Canadian citizens with pejoratives, including allegations of racism and terrorism, given that this behaviour hinders open and respectful dialogue relating to the important issues which the Freedom Convoy 2022 Protest in Ottawa has raised. The objective of the Freedom Convoy 2022 is to end not only the divisiveness of the mandates and restrictions, but also the divisiveness which is engendered by the use of this type of language.
22. The Freedom Convoy 2022 Protest has increased the Canadian public's awareness with respect to the unreasonableness of government COVID-19 mandates and restrictions. It has shown other Canadians that there is a significant, dedicated movement of Canadians who oppose these measures. There has recently been a dramatic change in Canadian public opinion towards these mandates and restrictions as reflected in a January 31 Angus Reid poll that indicates that 54% of all Canadians want all COVID-19 restrictions to end. The Freedom Convoy 2022 Protest has played an instrumental role in changing Canadian public

opinion against the policies of the Trudeau government. The federal government, unlike the vast majority of jurisdictions both in Canada and around the world, has refused to commit to a timetable to eliminate restrictions and mandates and, in fact, has indicated an intention to impose even more. Recently, The Right Honourable Prime Minister of Canada, Justin Trudeau's ("Trudeau")("Prime Minister") approval ratings have dropped to near all-time lows.

23. CFN and Nagle support the right of all Canadians to assemble and engage in peaceful protest as a means of expressing their thoughts, beliefs, and opinions in a free and democratic society.

24. CFN is a participating group in the Freedom Convoy 2022. CFN and Nagle both support the Freedom Convoy 2022 Protest in Ottawa and its objectives. Nagle, as a representative of CFN, has given speeches in support of the Freedom Convoy 2022 Protest in Ottawa. CFN and Nagle have been and intend to continue to be peaceful participants and supporters of the Freedom Convoy 2022 Protest in Ottawa.

25. CFN and Nagle unequivocally do not support violence. CFN and Nagle denounce violence and do not view violence as a legitimate means of expression or as a means of achieving one's political ends. CFN and Nagle are not aware of any violence in connection with the Freedom Convoy 2022 Protest in Ottawa, nor is there any intention on the part of the Freedom Convoy 2022 for there to be any. The repeatedly stated goal of the Freedom Convoy 2022 Protest is for it to be peaceful and to ensure that it remains that way.

The Respondent Invokes the Emergencies Act to Suppress Political Dissent

26. The Prime Minister does not support the Freedom Convoy 2022 Protests or its goals and has decried its supporters. On January 26, 2022, Prime Minister Trudeau made the following statement:

We know that the way through this pandemic is by getting everyone vaccinated and the overwhelming majority close to ninety percent of Canadians have done exactly that. **The small fringe minority of people who are on their way to Ottawa, or who are holding unacceptable views that they're expressing, do not represent the views of Canadians** who have been there for each other who know that following the science and stepping up to protect each other is the best way to continue to ensure our freedoms, our rights, our values as a country. [*emphasis added*]

27. Prime Minister Trudeau has previously referred to individuals who choose not to get vaccinated as often being racist and misogynistic extremists. He has rhetorically asked whether these people “should be tolerated.”

28. On February 16, 2022 during question period, Prime Minister Trudeau, in response to a question by a Jewish MP and descendant of Holocaust survivors, accused the Conservatives of “standing with people who wave swastikas” because of their opposition to the invocation of the *Emergencies Act*.

29. The invocation of the *Emergencies Act* is improperly motivated by a design to target, threaten and punish individuals who have different views from that of the Prime Minister with respect to COVID-19 mandates and restrictions. The political emergency that the Prime Minister is subjectively experiencing because of the Freedom Convoy 2022 Protest’s effectiveness in reducing support for his government’s non-science based COVID-19

mandates and restrictions falls far short of constituting an actual national emergency as defined in the *Emergencies Act*.

30. The invocation of the *Emergencies Act* now threatens Freedom Convoy 2022 Protestors and their supporters (those who hold differing views from the Prime Minister with respect to COVID-19 restrictions and mandates which the Prime Minister has stated are “unacceptable”) with deprivation of the use of their financial assets without due process of law.
31. The Honourable David Lametti, Minister of Justice and Attorney General of Canada, labelled some of those who support the Freedom Convoy 2022 Protestors as members of “a pro-Trump movement” that are donating “hundreds of thousands and millions of dollars to this kind of thing”. The Minister of Justice has said such supporters “ought to be worried” about the bank freezing their accounts. The freezing of financial property without due process contrary to the *Canadian Bill of Rights* has already occurred.
32. The freezing of financial assets of those who hold differing viewpoints from that of the government in power is a hallmark of undemocratic, totalitarian regimes. The federal government’s actions in purporting to invoke the *Emergencies Act* have caused worldwide respect for Canadian democracy and freedom to be greatly diminished. They have reflected poorly on Canada’s stature in the international community and will undoubtedly call into question Canada’s ability to be a positive influence for Human Rights in the international community. The President of El Salvador has suggested that the Canadian government’s credibility with respect to democracy and freedom is now worth “zero.”

News reports and comedians in the United States and around the world have mocked the undemocratic and totalitarian steps the Trudeau government has taken to punish Canadians who hold views contrary to those of the Prime Minister. It is clear that the invocation of the *Emergencies Act* has much more to do with crushing and intimidating dissent than dealing with any “emergency”.

The Respondent Invokes the Emergencies Act

33. On February 14, 2022, the Governor General in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, directed that a proclamation be issued directing that a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency.

34. The Public Order Emergency Proclamation specifies the nature of the state of affairs constituting the alleged emergency as follows:

(i) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(ii) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(iii) the adverse effects resulting from the impacts of the blockades on Canada’s relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,

(iv) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(v) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians

35. On February 15, 2022, the Governor General in Council issued P.C. 2022-107, the *Emergency Measures Regulations* and P.C. 2022-108, the *Emergency Economic Measures Order*, pursuant to the Public Order Emergency Proclamation.

36. Sections 2, 4, and 5 of *Emergency Measures Regulations* prohibit persons from, amongst other things:

(a) Participating in or travelling to or within an area where “a public assembly that may reasonably be expected to lead to a breach of the peace” by causing a “serious disruption of the movement of persons or goods or the serious interference with trade”; and

(b) Directly or indirectly, using, collecting, providing, making available or inviting a person to provide property to facilitate or participate in a public assembly that may reasonably be expected to lead to a breach of the peace by causing a serious disruption of the movement of persons or goods or the serious interference with trade.

37. The *Emergency Economic Measures Order* defines an individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations* as a “designated person”. The *Emergency Economic Measures Order* requires financial institutions and entities to cease from:

- (a) dealing in any property, wherever situated, that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of that designated person;
- (b) facilitating any transaction related to a dealing referred to in paragraph (a);
- (c) making available any property, including funds or virtual currency, to or for the benefit of a designated person or to a person acting on behalf of or at the direction of a designated person; or
- (d) providing any financial or related services to or for the benefit of any designated person or acquire any such services from or for the benefit of any such person or entity.

38. On February 15, 2022, members of the Ottawa Police Service distributed leaflets titled “Ottawa Police Service Notice to Demonstration Participants” to participants in the Freedom Convoy 2022 Protest in Ottawa which set out, amongst other things, that:

You must leave the area now. Anyone blocking streets, or assisting others in the blocking streets, are committing a criminal offence and you may be arrested. You must immediately cease further unlawful activity or you will face charges.

...

The Federal Emergencies Act allows for the regulation or prohibition of travel to, from or within any specified area. This means that anyone coming to Ottawa for the purpose of joining the ongoing demonstration is breaking the law.

The Public Order Emergency Proclamation is Ultra Vires and Unreasonable

39. The state of affairs set out in the Public Order Emergency Proclamation does not constitute a national emergency or a public order emergency; the issuing of the Public Order Emergency Proclamation is unreasonable in the circumstances.

40. In issuing the Public Order Emergency Proclamation without satisfying the conditions set out in the *Emergencies Act*, the Respondent has acted beyond its lawful jurisdiction.

There is No National Emergency

41. Section 3 of the *Emergencies Act* defines a “national emergency” as:

an urgent and critical situation of a temporary nature that

- (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
- (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

42. Section 16 of the *Emergencies Act* defines a “public order emergency” as meaning:

an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency

43. Section 16 of the *Emergencies Act* defines “threats to the security of Canada” as having the meaning assigned by section 2 of the *Canadian Security Intelligence Service Act*.
Section 2 of the *Canadian Security Intelligence Service Act* defines “threats to the security of Canada” as:

- (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
- (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

44. There are no reasonable grounds to believe that an urgent and critical situation that seriously endangers the lives, health or safety of Canadians exists as a result of the Freedom Convoy 2022 Protest in Ottawa.
45. Even if there are reasonable grounds to believe that an urgent and critical situation that seriously endangers the lives, health or safety of Canadians exists, which there are not, the provinces are capable and have the authority to deal with such a situation.
46. There is no urgent or critical situation that seriously endangers the lives, health or safety of Canadians that cannot be effectively dealt with under the laws of Canada that were in force prior to the Public Order Emergency Proclamation.
47. At least seven Provincial premiers have expressed that they do not view the invocation of the *Emergencies Act* as being necessary and/or were not in favour of invoking the *Emergencies Act*, namely: Alberta Premier Jason Kenney, Saskatchewan Premier Scott Moe, Quebec Premier François Legault, Manitoba Premier Heather Stefanson, Nova Scotia Premier Tim Houston, New Brunswick Premier Blaine Higgs, and Prince Edward Island Premier Dennis King,
48. The situation at the Ambassador Bridge and the situation at the border near Coutts, Alberta, were effectively resolved prior to the Public Order Emergency Proclamation. Neither CFN nor Nagle had a connection with those protests.

49. The Freedom Convoy 2022 Protest in Ottawa is a peaceful expression of dissent and does not constitute “a threat to the security of Canada” as defined in the *Canadian Security Intelligence Service Act*.

50. There are no reasonable grounds to believe that an urgent and critical situation that threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada exists. It does not appear that the Respondent asserts any.

The Public Order Emergency Proclamation is Inconsistent with the legislative intent of the Emergencies Act, the Bill of Rights and the Charter of Rights and Freedoms

51. The Public Order Emergency Proclamation is inconsistent with the scheme of the *Emergencies Act*, the object of the *Emergencies Act*, and the intention of Parliament at the time of the *Emergencies Act*’s drafting.

52. The *Emergencies Act* is expressly subject to the ~~Canadian Charter of Rights and Freedoms~~ and the *Canadian Bill of Rights*, “particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency.”

53. There are specific provisions contained within the *Emergency Economic Measures Order* which require financial institutions to deprive participants or supporters of those in the Freedom Convoy 2022 Protest of their property with a complete disregard for due process of law.

54. The Public Order Emergency Proclamation, and the regulations and orders that have been made pursuant thereto, are inconsistent with the *Canadian Bill of Rights*. In particular the

Public Order Emergency Proclamation, and the regulations and order that have flowed from same, infringe on the following fundamental rights and freedoms set out in the *Canadian Bill of Rights*:

- (a) the right of individuals not be deprived of enjoyment of property except by due process of law;
- (b) freedom of speech; and
- (c) freedom of assembly and association.

55. Section 2 of the *Canadian Bill of Rights* provides that the rights and freedoms recognized in the *Canadian Bill of Rights* are not to be abrogated, abridged or infringed in a law of Canada unless expressly declared by an Act of Parliament. The *Emergencies Act* does not contain a declaration that it shall be applied and construed to abrogate, abridge or infringe on the rights and freedoms recognized and declared in the *Canadian Bill of Rights*. Rather, it declares the opposite: the *Emergencies Act* is expressly subject to the rights and freedoms set out in the *Canadian Bill of Rights*.

56. The Public Order Emergency Proclamation, and the regulations and order that have been made pursuant thereto, also infringe upon individuals' rights to freedom of thought, belief, opinion and expression; freedom of peaceful assembly; and freedom of association guaranteed under section 2 of the ~~*Charter of Rights and Freedoms*~~.

57. The Public Order Emergency Proclamation, and the regulations and order that have been made pursuant thereto, also infringe upon individuals' rights to life, liberty and security of

person and the right not to be deprived thereof except in accordance with the principles of fundamental justice as guaranteed by section 7 of the *Charter*.

58. The Public Order Emergency Proclamation, and the regulations and order that have been made pursuant thereto, also infringe upon individuals' section 8 *Charter* right to be secure against unreasonable search and seizure.

59. The Public Order Emergency Proclamation, and the regulations and order that have been made pursuant thereto, also infringe upon individuals' section 9 *Charter* right not to be arbitrarily detained or imprisoned.

60. The Public Order Emergency Proclamation, and the regulations and order that have been made pursuant thereto, also infringe on individuals' section 11 *Charter* rights to be tried within a reasonable time, to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal, and not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations.

61. The Public Order Emergency Proclamation and the regulations and order that have made pursuant to this Proclamation are not reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

62. The Public Order Emergency Proclamation is aimed at dealing with what the Prime Minister primarily perceives to be a political emergency by unlawfully attempting to

suppress and intimidate the expression of dissenting thoughts, beliefs and opinions of a segment of the Canadian population that the Prime Minister has declared to hold “unacceptable” views. The Proclamation is unlawful and *ultra vires* because there is no “national emergency” nor is there a “public order emergency.” It is also unlawful and *ultra vires* because, *inter alia*, it is a clear breach of the Bill of Rights because it purports to allow Canadians to be deprived of the enjoyment of their property without due process of law.

Rules and Legislation Relied Upon

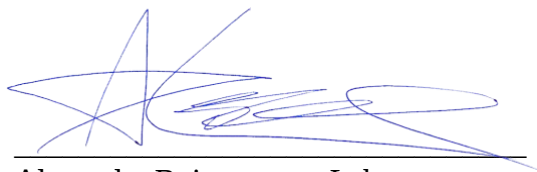
63. The Applicants rely on the following statutory provisions and rules:

- (a) The *Emergencies Act*;
- (b) The *Canadian Security Intelligence Service Act*, RSC 1985, c C-23;
- (c) ~~Paragraphs~~ Sections 1(a), (b), (d), and (e), and 2 of the *Canadian Bill of Rights*;
- (d) Sections 2 (b), (c), (d), 7, 8, 9, and 11 of the *Canadian Charter of Rights and Freedoms*;
- (e) Section 52 of the *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 52;
- (f) The Interpretation Act, RSC 1985, c I-21;
- (g) Sections 18 through 18.4 of the *Federal Courts Act*, RSC 1985, c F-7;
- (h) Rules 3, 300-319, 334.1-334.40 of the *Federal Court Rules*, SOR/98-106; and
- (i) Such further and other statutory provisions and rules as counsel may advise.

This application will be supported by the following material:

64. The Affidavit of Kristen Nagle, sworn March 4, 2022~~; to be sworn~~;
65. The Affidavit of Tom Marazzo, sworn March 4, 2022;
66. The Affidavit of Simon Sigler, sworn March 4, 2022 ~~Hansard relating to the *Emergencies Act* R.S.C., 1985, c. 22 (4th Supp.)~~; and
67. Such further and other material as counsel may advise and this Honourable Court may permit.

February 17, 2022



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Solicitors for the Applicants

Court File No.: T-306-22

FEDERAL COURT

BETWEEN:

CANADIAN FRONTLINE NURSES and KRISTEN NAGLE

Applicants/Moving Parties

and

ATTORNEY GENERAL OF CANADA

Respondent/Responding Party

AFFIDAVIT OF SIMON SIGLER

I, Simon Sigler, a barrister and solicitor at the firm of Johnstone & Cowling LLP, of the City of Toronto, Ontario **SWEAR THAT:**

1. I am a lawyer at Johnstone & Cowling LLP and as such have personal knowledge of the facts and matters hereinafter deposed to save and except where same are stated to be based upon information or belief and where so stated I verily believe the same to be true.
2. Canadian Frontline Nurses and Kristen Nagle's original Notice of Application in this matter was issued and served on the Respondent, the Attorney General of Canada February 18, 2022.

3. On February 19, 2022, I served our Notice of Constitutional Question on the Respondent and the Provincial Attorneys General. The Notice of Constitutional Question raises grounds relating to sections 2(b), 2(c), 2(d), 7, 8, 9, and 11 of the *Charter*. A copy of my email of February 19, 2022 together with the attached Notice of Constitutional Question is attached hereto and marked as Exhibit “A”.
4. I have reviewed the proposed Amended Notice of Application. The proposed amendments seek to:
 - (a) update the contact information of the Office of the Attorney General [see page 2 of the proposed Amended Notice of Application];
 - (b) update the Application to particularize the paragraphs under section 2 of the *Charter* that are being relied upon [see paragraphs 5 and 63(d) of the proposed Amended Notice of Application]
 - (c) add sections 7, 8, 9, and 11 of the *Charter* to the grounds of the Application [see paragraphs 5, 57-60, and 63(d) of the proposed Amended Notice of Application]
 - (d) clarify that section 2 of the *Canadian Bill of Rights* is also being relied upon (even though it is already set out in the body of the Notice of Application at paragraph 55) [see paragraphs 63(d) of the proposed Amended Notice of Application]
 - (e) add the *Interpretation Act*, RSC 1985, c I-21 as an additional statute that will be relied upon by the Applicant; [see paragraphs 63(f) of the proposed Amended Notice of Application];
 - (f) remove the Applicant’s request for a stay of the proceedings as this is no longer an issue that needs to be resolved by this Court [see crossed-out paragraph 7];

- (g) make a change for grammatical purposes at paragraph 48 (i.e. the addition of “Neither” before “CFN nor Nagle had a connection with those protests”) [see paragraph 48 of the proposed Amended Notice of Application]; and
- (h) particularize the affidavits that are relied upon in support of the Application. [see paragraphs 64 to 66 of the proposed Amended Notice of Application].
5. It is my understanding from my attendance of the case management conferences that have been held since the commencement of this Application, that Canadian Frontline Nurses’ and Kristen Nagle’s Application is to be heard together with applications T-316-22, T-347-22, and T-382-22. These matters are also judicial review applications relating to the invocation of the *Emergencies Act* and the measures that were passed pursuant thereto.
 6. I have reviewed the Notice of Application of the Canadian Civil Liberties Association (“CCLA”) bearing Court File No. T-316-22 dated February 18, 2022. CCLA’s Notice of Application raises sections 2(b), 2(c), 2(d), 7 and 8 of the *Charter*. A copy of CCLA’s Notice of Application is attached hereto and marked as Exhibit “B”.
 7. I have reviewed the Notice of Application of the Canadian Constitution Foundation (“CCF”) bearing Court File No. T-347-22 dated February 23, 2022. CCF’s Notice of Application raises section 2(b), 2(c), 2(d), 7, and 8 of the *Charter*. A copy of CCLA’s Notice of Application is attached hereto and marked as Exhibit “C”.
 8. I have reviewed the Notice of Application of Jeremiah Jost, Edward Cornell, Vincent Gircys, and Harold Ristau (“Jost et. al.”) bearing Court File No. T-382-22 dated February

23, 2022. The Notice of Application filed by Jost et. al. raises sections 2(b), 2(c), 2(d), 6, 7, 8, 9, 12 and 15 of the *Charter* and sections 1 and 2 of the *Canadian Bill of Rights*. This Application also relies on the *Interpretation Act*. A copy Jost et. al.'s Notice of Application is attached hereto and marked as Exhibit "D".

9. On March 11, 2022, Alexander Boissonneau-Lehner, the solicitor for the Applicants Canadian Frontline Nurses and Kristen Nagle, sent a letter to the solicitors for the Respondents and the Court attaching to the proposed Amended Notice of Application. A copy of Mr. Boissonneau-Lehner's Amended Notice of Application is attached hereto and marked as Exhibit "E".

10. On March 11, 2022, a case management conference was held before Prothonotary Milczynski. Prothonotary Milczynski's direction of that date in part provided in part:

With respect to the proposed amendments to the notice of application in T-306-22, the parties in that file shall advise as soon as practicable whether a motion is required.

A copy of Prothonotary Milczynski's direction of March 11, 2022 is attached hereto and marked as Exhibit "F".

11. On March 15, 2022, Mr. Boissonneau-Lehner emailed the solicitors for the Respondent asking for its position with respect to the proposed amendments to the Notice of Application. A copy of Mr. Boissonneau-Lehner's email is attached hereto and marked as Exhibit "G"

12. On March 16, 2022, R. Jeff Anderson, solicitor for the Respondent, advised that they would provide a response to the Respondent's request by March 21, 2022 at the latest. A copy of Mr. Anderson's email is attached hereto and marked as Exhibit "H".
13. On March 21, 2022, Mr. Anderson sent an email advising the Applicant that it would not consent to the proposed Amended Notice of Application. A copy of Mr. Anderson's email is attached hereto and marked as Exhibit "I".
14. On March 25, 2022, a further case management conference was held. During this case conference, John Provar, counsel for the Respondent, confirmed that the Respondent is opposing the proposed Amended Notice of Application and Mr. Boissonneau-Lehner confirmed advised the Applicant would bring a motion in the circumstances.
15. I am not aware of any prejudice or injustice that would result to the Respondent if the Notice of Application was amended to reflect the amendments sought by the Applicants.

SWORN BEFORE ME at the City of Toronto, Ontario, on March 29, 2022.



SIMON SIGLER



Alexander Boissonneau-Lehner
Commissioner for Taking Affidavits, etc.

This is Exhibit "A" to the Affidavit of Simon Sigler
sworn March 29, 2022.

A handwritten signature in blue ink, appearing to be 'Simon Sigler', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Subject: T-306-22 - CANADIAN FRONTLINE NURSES and KRISTEN NAGLE v. ATTORNEY GENERAL OF CANADA - NOTICE OF CONSTITUTIONAL QUESTION

Date: Saturday, February 19, 2022 at 9:17:55 PM Eastern Standard Time

From: Simon Sigler

To: clbsupport@ontario.ca, Provart, John, Coleman, Rebecca, Laldin, Ayesha, Widdifield, Shain, Flaim, Roger, Schneider, James, Gibbs, Andrew, Anderson, R. Jeff, jsg.constitutionalservice@gov.ab.ca, rmdemone@gov.pe.ca, gareth.morley@gov.bc.ca, alandra.harlingten@gov.bc.ca, francisdemers@justice.gouv.qc.ca, isabel.lavoiedaigle@gnb.ca, christine.enns@gov.ab.ca, alan.jacobson@gov.sk.ca, edward.gores@novascotia.ca, DPS-MSP.Information@gnb.ca, JUSTMIN@novascotia.ca, justice@gov.nl.ca, minjus@leg.gov.mb.ca, dmjus@leg.gov.mb.ca, jus.minister@gov.sk.ca, ministryofjustice@gov.ab.ca, David Cowling, Alexander Boissonneau-Lehner, MinisterJPS@gov.pe.ca, jrklements@gov.pe.ca, webteam@gov.sk.ca, ministre@justice.gouv.qc.ca, Leader.SJB@assnat.qc.ca, sjb.BORD@assnat.qc.ca, Hugh.Flemming@gnb.ca, AG.Minister@gov.bc.ca

Attachments: 2022.02.19 - T-306-22- Notice of Constitutional Question.pdf, T-306-22 NOTICE OF APPLICATION - CANADIAN FRONTLINE NURSES ET AL.pdf, T-306-22 Order.pdf, 2022-02-18 - Direction (Mosley J.).pdf, NOTICE OF CONSENT TO ELECTRONIC SERVICE.docx, image001.png

Dear Attorneys General/Cher Procureur general,

We are the solicitors for the Applicants in the above referenced matter. The solicitors for the Respondent are copied on this email.

Please find attached the Notice of Constitutional Question together with the Notice of Application referenced therein. If we have inadvertently used the incorrect email address, would you kindly forward this email to the appropriate person, and copy me on same. A draft notice of consent to electronic service form is attached hereto.

Chief Justice Crampton has ordered that this proceeding shall continue as a specially managed proceeding per Rules 47 and 348 of the *Federal Court Rules*. Justice Richard G. Mosley and Prothonotary Martha Milczynski are assigned as Case Management Judges. A copy of the Order is attached hereto.

Justice Mosley scheduled a case conference for 10:00 AM on Tuesday, February 22, 2022, by Zoom videoconference. A copy of the direction is attached hereto.

Please confirm receipt of this email.

Have a good weekend.

Respectfully,

Simon Sigler
Associate

Toronto Office: 441 Jarvis Street, Toronto, Ontario M4Y 2G8

London Office: 284 Dundas Street, 3rd Floor, London, Ontario N6B 1T6

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This message (including attachments, if any) is confidential and is subject to solicitor-client privilege. This message is intended for the above-named recipient(s) only. If you have received this message in error, please notify me by return email and delete this message and any attachment from your system. Any unauthorized use or disclosure of this message is strictly prohibited.

Court File No.: T-306-22

FEDERAL COURT

BETWEEN:

CANADIAN FRONTLINE NURSES and KRISTEN NAGLE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent/

NOTICE OF CONSTITUTIONAL QUESTION

The Applicants intend to question the constitutional validity, applicability or effect of the Order in Council PC Number: 2022-106 proclamation of a public order emergency issued February 14, 2022 (the “Proclamation”), pursuant to subsection 17(1) of the *Emergencies Act*, RSC 1985, c 22 (4th Supp) (the “*Emergencies Act*”), P.C. 2022-107, the *Emergency Measures Regulations* issued February 15, 2022, and P.C. 2022-108, the *Emergency Economic Measures Order* issued February 15, 2022,

The question is to be argued on a date to be set by the Court.

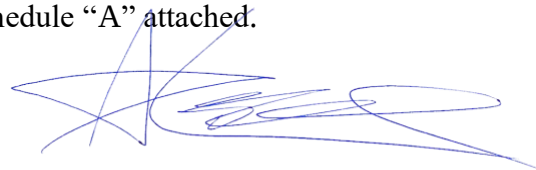
The following are the material facts giving rise to the constitutional question:

See the facts referenced in the Notice of Application attached.

The following is the legal basis for the constitutional question:

See list of Constitutional Issues set out in Schedule “A” attached.

February 19, 2022



Alexander Boissonneau-Lehner
JOHNSTONE & COWLING LLP
441 Jarvis Street
Toronto, Ontario
M4Y 2G8
Tel: 416-546-2103
Fax: 416-546-2104
Email: alehner@johnstonecowling.com
Solicitors for the Applicants

TO: **Attorney General of Canada**

Department of Justice Canada
National Litigation Sector
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, ON
M5H 1T1

AND TO: **Procureur general du Québec (Justice Québec)**

Simon Jolin-Barrette
Édifice Louis-Philippe-Pigeon
1200, route de l'Église
9e étage
Québec, Québec
G1V 4M1

AND TO: **Attorney General of British Columbia**

1001 Douglas Street
Victoria, British Columbia
V8W 9J7

Deputy Attorney General

Ministry of Attorney General
PO Box 9280 Stn Prov Govt
Victoria, BC
V8W 9J7

AND TO: **Attorney General of Manitoba**

104 Legislative Building
450 Broadway
Winnipeg, Manitoba
R3C 0V8

Deputy Minister and Deputy Attorney General

104 Legislative Building
450 Broadway
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R3C 0V8

AND TO: Attorney General of Ontario

11th Floor
720 Bay Street
Toronto, Ontario
M5G 2K1

AND TO: Attorney General of New Brunswick

Chancery Place, Rm 2078
PO Box 6000
Fredericton, New Brunswick E3B 5H1

AND TO: Attorney General of Alberta

c/o Director
Constitutional and Aboriginal Law, Legal Services Division
Ministry of Justice and Solicitor General
10th Floor, 102A Tower
10025 102A Avenue
Edmonton, AB T5J 2Z2

AND TO: Attorney General of Saskatchewan

Legislative Building
Rm. 355, 2405 Legislative Drive
Regina, SK S4S 0B3

AND TO: Attorney General of Nova Scotia

Department of Justice
7th Floor, 1690 Hollis Street
Halifax, Nova Scotia
B3J 3J9

AND TO: Attorney General of Newfoundland & Labrador

Office of the Attorney General
Department of Justice and Public Safety
4th Floor, East Block
Confederation Building
P.O. Box 8700
St. John's, NL
A1B 4J6

AND TO: **Attorney General of Prince Edward Island**

Department of Justice
Shaw Building, 4th Floor
95 Rochford Street
Charlottetown, Prince Edward Island
C1A 7N8

Schedule “A”
LIST OF CONSTITUTIONAL ISSUES

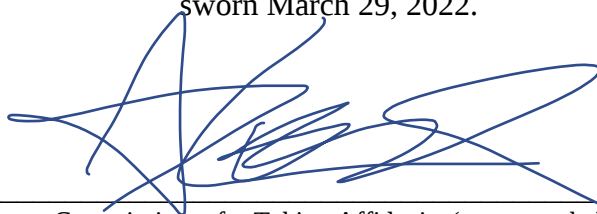
Primary Constitutional Questions

Does the Order in Council PC Number: 2022-106 proclamation of a public order emergency issued February 14, 2022 (the “Proclamation”) and the regulation and order implemented pursuant to the Proclamation:

- a) infringe section 7 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) insofar as the Proclamation and the associated regulation and order (together the “dictates”) deny Canadians the right to life, liberty and security of the person and the right not to be deprived thereof, and that such denials and deprivations do not accord with principles of fundamental justice; or
- b) infringe section 2(b) of the *Charter* insofar as these dictates deny Canadians freedom of thought, belief and expression; or
- c) infringe section 2(c) of the *Charter* insofar as these dictates deny Canadians freedom of peaceful assembly; or
- d) infringe section 2(d) of the *Charter* insofar as these dictates deny Canadians freedom of association; or
- e) infringe section 8 of the *Charter* insofar as these dictates deny Canadians the right to be secure against unreasonable search and seizure; or
- f) infringe section 9 of the *Charter* insofar as these dictates deny Canadians the right not to be arbitrarily detained or imprisoned;
- g) infringe section 11 of the *Charter* insofar as these dictates deny Canadians the right:
 - (i) to be tried within a reasonable time;

- (ii) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
 - (iii) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations; and
- h) are these dictates not saved by section 1 of the *Charter* in that the impugned dictates are not a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society.

This is Exhibit "B" to the Affidavit of Simon Sigler
sworn March 29, 2022.

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Court File No. T-316-22

**FEDERAL COURT****CANADIAN CIVIL LIBERTIES ASSOCIATION**

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

NOTICE OF APPLICATION**TO THE RESPONDENT:**

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 18, 2022

Issued by: 'JACQUELINE SMITH'

Address of local office: 180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: **ATTORNEY GENERAL OF CANADA**
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

APPLICATION

This is an application for judicial review in respect of the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 [*Emergency Proclamation*], made pursuant to s. 17(1) of the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.). This is also an application for judicial review in respect of the following regulations made pursuant to s. 19(1) of the *Emergencies Act*: the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21, and the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22.

THE APPLICANT MAKES APPLICATION FOR:

1. an order quashing the *Emergency Proclamation*;
2. an order quashing the *Emergency Measures Regulations*;
3. in the alternative to (2),
 - (a) an order that ss. 2, 4, and 5 of the *Emergency Measures Regulations* are inconsistent with s. 2(b) of the *Canadian Charter of Rights and Freedoms* [*Charter*], and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Charter*, as well as an immediately effective declaration that these sections are of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
 - (b) an order that ss. 2 and 4 of the *Emergency Measures Regulations* are inconsistent with s. 2(c) and s. 2(d) of the *Charter*, and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to

- s. 1 of the *Charter*, as well as an immediately effective declaration that these sections are of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
- (c) an order that s. 10 of the *Emergency Measures Regulations* is inconsistent with s. 7 of the *Charter*, and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Charter*, as well as an immediately effective declaration that this section is of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
4. an order quashing the *Emergency Economic Measures Order*;
5. in the alternative to (4), an order that s. 5 of the *Emergency Economic Measures Order* is inconsistent with s. 8 of the *Charter*, and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Charter*, as well as an immediately effective declaration that this section is of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
6. a hearing of this matter on an expedited basis;
7. an order that there be no costs of this proceeding; and
8. such further and other relief as counsel may advise and as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

Overview

1. This application arises out of the federal government's decision to invoke the *Emergencies Act* to quell protests centered in Ottawa, Ontario, and at various border crossings, as well as to pre-empt further action elsewhere.
2. The *Emergencies Act*, when properly invoked, grants an extraordinary amount of power to the executive branch of the federal government. The Act was intended to address situations of war, invasion, and other national emergencies that are so exigent and threatening that they cannot be dealt with under existing laws or through typical democratic processes.
3. Since the passage of the *Emergencies Act* in 1988, Canada has faced numerous national crises. There have been terrorist attacks, economic collapses, and a pandemic. All of these situations were dealt with using existing laws and normal democratic processes, or, when absolutely necessary, municipal or provincial emergency powers. There have also been national protest movements that occupied public spaces and city streets for months and blockaded critical infrastructure such as railways — essential democratic activity that frequently supports marginalized communities' struggles for equality and justice. These too have been responded to within the context of existing laws.
4. The federal government argues that the current situation is different — that the protests currently occurring in Canada are distinct from other previous national crises, so much

- so that they can justify resort to the federal *Emergencies Act* for the first time in Canadian history.
5. The *Emergencies Act*, however, contains stringent preconditions for its invocation. In recognition of the extreme nature of the powers that it grants and the risk of overreach and misuse, the legislative drafters included very high legal thresholds that had to be met before the powers under the Act could be used. Those thresholds have not been met. There is no nationwide public order emergency within the meaning of the Act. The protests can be, and in many cases already have been, managed under existing Canadian law. The government's proclamation of a national emergency on February 14, 2022, and the orders flowing from that proclamation, are therefore unlawful and unconstitutional.
 6. The protests at issue began in late January 2022 when, following the imposition of a COVID-19 vaccine mandate for truck drivers crossing the Canada-United States border, a convoy of vehicles began travelling from British Columbia to Ontario. This convoy has since become known as the "Freedom Convoy". By January 28, 2022, the Freedom Convoy had arrived in Ottawa, along with thousands of loosely affiliated and unaffiliated protestors. It is now apparent that the protests take aim at measures beyond the vaccine mandate for cross-border truck drivers and raise more general concerns about governmental and regulatory responses to the pandemic.
 7. As the protests in Ottawa continued into February, similar but smaller local protests sprang up in other parts of Canada, including in Winnipeg, Manitoba, and Enfield and Halifax, Nova Scotia. The most notable of these local protests included the blockading

- of ports of entry at the Ambassador Bridge in Windsor, Ontario, a provincial highway in Sarnia, Ontario, the Peace Bridge in Fort Erie, Ontario, and international border crossings at Emerson, Manitoba, and Coutts, Alberta.
8. Many individuals involved in these protests have been entirely law-abiding and peaceful. Many others have engaged in forms of non-violent disruptive action that have had a significant and at times harmful impact on local residents, including: blockading roadways; driving vehicles slowly, thereby disrupting traffic; chanting; marching; sitting-in on city streets; erecting structures in public space; and creating noise by honking horns. There have also been disturbing reports of individual protestors or small groups of people engaging in violent and discriminatory acts. In Coutts, Alberta, for example, the RCMP discovered a cache of guns, ammunition, and body armour which led to the immediate arrest of 13 individuals. In Ottawa, there have been reports that some of the protesters engaged in physical and verbal harassment, as well as intimidation on the basis of race and property destruction on the basis of homophobic bias. This has been deeply disturbing to residents of Ottawa and people across the country, and in particular has created fear amongst racialized and marginalized communities. There is no doubt that these incidents are more than disruptive — they are dangerous, harmful, and unacceptable.
 9. Given this context, it is no surprise that many municipal and provincial governments, along with local police services across the country, have actively worked to manage the situations in their respective jurisdictions. The government of Ontario has instituted a state of emergency and made it an offence to disrupt critical infrastructure, while Nova Scotia's government has issued an emergency directive prohibiting protestors

from blockading or disrupting traffic. Police across the country have been called in to prepare for and respond to protests in numerous cities, where they have successfully limited disruptions to essential services while still ensuring that protestors can exercise their peaceful assembly rights. The courts have also been active, issuing injunctive relief targeting some of the most disruptive and harmful behaviour.

10. In sum, the vast majority of protests across this country have been handled by local authorities using existing laws, and indeed several provinces have stated that resorting to the *Emergencies Act* is unnecessary. Despite this fact, the federal government nevertheless proclaimed the existence of a public order emergency throughout the country.
11. The legislative thresholds have not been met and, for that reason, the *Emergency Proclamation* is unreasonable and *ultra vires*.
12. Legal resort to these powers requires that the executive have a reasonable basis for believing that there is (a) a threat to the security of Canada and (b) that threat is serious enough to be a national emergency. This requires showing, among other things, that the lives, health, or safety of Canadians has been seriously endangered, and that neither the provinces nor existing law are capable of dealing with that danger. The extraordinary powers granted under the *Emergencies Act* are reserved for unforeseen circumstances that the numerous laws and regulations of this country cannot address. Protests and demonstrations — even loud and lengthy ones — do not fall within this category.

13. The government has failed to discharge its burden to establish either a threat to the security of Canada or a national emergency. The *Emergencies Act* does not permit the government to proclaim an emergency based on unspecified concerns about economic instability and international trade, a general sense of public unrest, or donations to a cause from people outside of Canada. Even the presence of a small number of dangerous individuals in specific locations, while deeply concerning and a proper priority for law enforcement officials, would not be enough to justify the proclamation of a *nation-wide* emergency. A proclamation of emergency cannot be grounded in nebulous or strained claims about unspecified danger.
14. Moreover, the provinces have shown that they are capable of dealing with the protests using existing law. The fact that some protests remained for longer than others, or were more disruptive than others, is not in and of itself an indication of a lack of capacity or legal powers. The most economically disruptive forms of protest, such as the blockades at ports of entry to Canada, were largely resolved with provincial powers and prior to the *Emergency Proclamation*. Likewise, the armed faction in Coutts was neutralized.
15. While the federal government and many Canadians may disagree with the nature and extent of the various municipal and provincial responses, this disagreement is no justification for resorting to the *Emergencies Act* to take control of provincial powers and blur the lines that federalism firmly draws.
16. The decision to invoke the *Emergencies Act* must also be scrutinized in light of the sweeping *Charter* implications of the regulations made in reliance on the *Emergency Proclamation* (i.e., the *Emergency Measures Regulations* and the *Emergency*

Economic Measures Order). These regulations inhibit protest in a manner that offends the fundamental freedoms of free expression, peaceful assembly, and association. Many protests, including those brought by communities who often have no other way of having their concerns heard, are both largely peaceful and intensely disruptive. Such protests are an essential part of life in a vibrant democracy. The regulations at issue here also undermine protest by conscripting certain institutions into funneling protestors' financial information to the RCMP and CSIS, contrary to the right to be free from unreasonable search and seizure. These regulations apply everywhere in Canada, despite the fact that the protests are focused in discrete areas.

17. Accordingly, the government's resort to its emergency powers cannot be justified in relation to the factual and legal constraints at play. Ultimately, the exercise of executive power here lacks the intelligibility and justification necessary to survive judicial review by this Court.

The Emergencies Act

18. The *Emergencies Act* empowers the Governor in Council to proclaim, among other things, a "public order emergency".
19. A public order emergency is defined in s. 16 of the *Emergencies Act* and arises where two objective threshold requirements are met.
20. First, there must be "threats to the security of Canada". This phrase has the meaning ascribed by s. 2 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23, which sets out four types of threats:

(a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,

(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,

(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and

(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

21. However, “threats to the security of Canada” do *not* include “lawful advocacy, protest or dissent”, unless it involves any of the activities referred to above.
22. Second, the situation must be serious enough to constitute a “national emergency”, which is defined in s. 3 of the *Emergencies Act* as follows:

For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

23. Section 17(1) of the *Emergencies Act* authorizes the Governor in Council to proclaim a public order emergency upon believing, on reasonable grounds, that such an emergency exists and necessitates the taking of special temporary measures. In the

event that the effects of the emergency do not extend to the whole of Canada, s. 17(2)(c) requires that the proclamation specify the area(s) of Canada to which the emergency extends.

24. While the proclamation of a public order emergency persists, s. 19(1) of the *Emergencies Act* supplies the Governor in Council with the power to make such orders or regulations as are believed to be necessary for dealing with the emergency. However, pursuant to s. 19(3), this power must be exercised or performed in a manner that will not unduly impair the ability of any province to take measures for dealing with an emergency in the province and with the view of achieving, to the extent possible, concerted action with each province.

The Emergency Proclamation

25. The *Emergency Proclamation* was issued on February 14, 2022, pursuant to s. 17(1) of the *Emergencies Act*. It proclaimed that a public order emergency exists throughout the entirety of Canada.
26. The proclamation specifies that the emergency is principally the result of “blockades”. In particular, it states that the emergency is constituted of:

(a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(c) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,

(d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

27. The proclamation also contemplates that certain special temporary measures may be necessary for dealing with the emergency, including “measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace”, “measures to authorize or direct any person to render essential services ... including services related to the removal, towing and storage of any vehicle ... that is part of a blockade”, and measures to authorize or direct any person to render essential services to relieve the impacts of the blockade”.
28. The *Emergency Proclamation* will remain in force for 30 days beginning February 14, 2022, unless it is revoked by a vote at the House of Commons or the Senate. From that point, it may be continued in accordance with the provisions of the *Emergencies Act*.

The Emergency Measures Regulations and the Emergency Economic Measures Order

29. On the basis that the *Emergency Proclamation* was effective, the *Emergency Measures Regulations* and the *Emergency Economic Measures Order* were enacted on February 15, 2022.
30. The *Emergency Measures Regulations* create four key prohibitions backed by the threat of conviction and imprisonment.
31. Section 2(1) prohibits participation in a public assembly that may be reasonably expected to lead to a breach of the peace by:
 - (a) the serious disruption of the movement of persons or goods or the serious interference with trade;
 - (b) the interference with the functioning of critical infrastructure; or
 - (c) the support of the threat or use of acts of serious violence against persons or property.
32. Section 3 prohibits foreign nationals from entering Canada with the intent to participate in or facilitate a s. 2 assembly.
33. Section 4(1) prohibits everyone from travelling to an area where a s. 2 assembly is taking place, subject to various exemptions (“Prohibition on Travel to an Assembly”).
34. Section 5 is perhaps the broadest prohibition of all, prohibiting anyone from directly or indirectly providing property to facilitate or participate in any s. 2 assembly or for the purpose of benefitting any person who is facilitating or participating in such an

assembly (“Prohibition on the Provision of Property”). This provision also extends to similar use, collection, making available, or inviting a person to provide such property.

35. Section 10(2) creates penalties for failure to comply with the *Emergency Measures Regulations*:

(2) In the case of a failure to comply with these Regulations, any peace officer may take the necessary measures to ensure the compliance and allow for the prosecution for that failure to comply

(a) on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or

(b) on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years or to both.

(“Prosecution Provision”)

36. The *Emergency Economic Measures Order* contains provisions that compound the impact of the *Emergency Measures Regulations*. Most importantly, s. 2(1) requires banks, credit unions, insurance companies, securities dealers, money services businesses, crowd-funding platforms, and payment service providers to freeze the assets and accounts of “designated person[s]” (the “Freezing Measures”). Designated persons include any individual who is engaged, directly or indirectly, in an activity prohibited by ss. 2 to 5 of the *Emergency Measures Regulations*. This freezing must occur immediately upon the coming into force of the *Emergency Economic Measures Order*.

37. Pursuant to s. 3 of the *Emergency Economic Measures Order*, the above institutions also have a duty to determine, on a continuing basis, whether they are in possession or

control of property owned, held, or controlled by or on behalf of a designated person. If they are, the institutions must register with the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”), pursuant to s. 4(1). These entities must also disclose, without delay, to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service:

- (a) the existence of property in their possession or control that they have reason to believe is owned, held or controlled by or on behalf of a designated person; and
- (b) any information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

The Emergency Proclamation Is Unreasonable and Ultra Vires

38. As with any exercise of authority granted by a federal statute, the *Emergency Proclamation* must be consistent with the scope of the statutory mandate and meet the requirements of its enabling legislation. In this regard, it fails.
39. The *Emergency Proclamation* is not justified in light of the legal and factual constraints that bear upon it, most notably the governing statutory scheme and the powers it confers, which broadly impact individuals’ *Charter*-protected rights.

Governing Statutory Scheme

40. The *Emergency Proclamation* fails to meet the two threshold requirements of the *Emergencies Act*: threats to the security of Canada and a national emergency.
41. The *Emergencies Act* requires that there be reasonable grounds to believe that these threshold requirements are met. This requires more than just speculation, suspicion,

political pressure, or even apprehension — there must be an objectively reasonable belief based on compelling and credible evidence.

42. The first threshold requirement — that there be threats to the security of Canada — is not met. None of the four threats set out in the *Canadian Security Intelligence Service Act* are present. A public protest does not qualify as “espionage or sabotage”, as required by s. 2(a). Even if that protest were a “foreign influenced activity” simply because it is partly supported by crowdfunding from other countries, it is neither clandestine nor deceptive; it also does not, as a whole, involve a threat to any person, as required by s. 2(b). While it is true that the protest — like any protest — is designed to active to achieve a political objective, there is no compelling evidence that this objective is generally being pursued by acts of “serious violence”, as required by s. 2(c). And there is likewise no sustainable suggestion that the constitutionally established system of government in Canada is being imperilled by covert unlawful acts or an “overthrow by violence”, as required by s. 2(d).
43. The second threshold requirement — that there be a “national emergency” — similarly is not met.
44. How the protests and blockades seriously endanger the lives, health, or safety of Canadians, as required by the definition of “national emergency”, is not apparent from either the *Emergency Proclamation* or the explanation tabled pursuant to s. 58(1) of the *Emergencies Act*. Disruption does not meet this threshold, and the actions at issue have been generally peaceful. While the *Emergency Proclamation* refers to adverse effects on the Canadian economy, it fails to demonstrate any connection between those effects

and the lives, health, and safety of Canadians. Although the proclamation refers to a supply chain breakdown, there is no compelling evidence that Canadians will go without necessities in a way that would endanger them — particularly not now given that the situation at the Ambassador Bridge and those in Fort Erie, Ontario, and Coutts, Alberta, have been resolved. The same is true of the proclamation’s oblique reference to adverse effects on Canada’s “relationship with its trading partners”. Finally, while there is a reference to a potential violence and unrest, the government must have some basis — beyond a large gathering of dissenters — for considering this potential to be real and substantial. It does not.

45. Even if there were a basis for believing that certain of the protests cause sufficient danger, the federal government goes too far in suggesting that danger is present throughout the entirety of the country. At most, a few localities are facing the acute effects of the protests. The vast majority of the country is not affected, much less endangered, by the protests — and yet, every person in Canada is now living under a proclaimed public safety emergency, and is subject to the orders made on the basis of that emergency.
46. However serious or widespread the danger at issue truly is, it is unreasonable to contend that it “exceed[s] the capacity or authority of a province to deal with it”. The protests *can* be effectively dealt with under other laws of Canada. These are also essential elements of a “national emergency”.
47. Among other things, the criminal law is more than capable of addressing all of the federal government’s concerns, through specific offences like mischief, unlawful

- assembly, causing a disturbance, or nuisance, as well as the powers concomitant to arrest. Municipal by-laws also operate to similar effect.
48. As recent judicial orders have shown, injunctions are available to restrain the conduct said to be creating an emergency. Injunctions have a long history of being resorted to in order to deal with demonstrations or protests that cause economic harm. In relation to the current protests, injunctions have been granted to restrain the use of horns and vehicle idling, to enforce by-laws regarding the same, and to force protestors to leave the Ambassador Bridge. This latter injunction in particular has proved effective: the Bridge is now open, and it was opened before the proclamation of any federal emergency.
 49. All of the foregoing laws can also be bolstered by the imposition of a *provincial* state of emergency. This is the approach Ontario's government has taken. On February 11, 2022 — four days before the federal government's invocation of the *Emergencies Act* — an emergency was already declared in the Province of Ontario, pursuant to O. Reg. 69/22. The next day, O. Reg. 71/22 [*Critical Infrastructure and Highways Regulation*] was enacted. Among other things, this regulation enjoins individuals from impeding access to critical infrastructure and highways and extends to police officers the power to order individuals to do the same. The overlap of the *Critical Infrastructure and Highways Regulation* and the *Emergency Measures Regulations* belies the contention that the provinces did not have the capacity to address the protests at issue.
 50. Moreover, the *Critical Infrastructure and Highways Regulation* is backed by the force set out in the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s.

7.0.11, which creates substantial fines for the contravention of emergency orders or the obstruction of persons performing duties conferred by such orders:

Offences

7.0.11 (1) Every person who fails to comply with an order under subsection 7.0.2 (4) or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by an order under that subsection is guilty of an offence and is liable on conviction,

(a) in the case of an individual, subject to clause (b), to a fine of not more than \$100,000 and for a term of imprisonment of not more than one year;

(b) in the case of an individual who is a director or officer of a corporation, to a fine of not more than \$500,000 and for a term of imprisonment of not more than one year; and

(c) in the case of a corporation, to a fine of not more than \$10,000,000.

Separate offence

(2) A person is guilty of a separate offence on each day that an offence under subsection (1) occurs or continues.

51. To an extent, the Government's precipitous invocation of the *Emergencies Act* appears to have been motivated by its view that the provinces have not gone far enough in addressing intraprovincial protest. However, this does not mean that the provinces lack the *capacity* or *authority* to deal with the protests, nor does it mean that that the laws of Canada are *incapable* of dealing with them. To the contrary, the provinces have all the tools they need. The *Emergencies Act* was not intended to provide the federal government a pathway to arrogate provincial powers to itself in circumstances where the provinces do not exercise those powers in the way the federal government would

have. Use of the Act in this way strains the balance that federalism demands and exceeds the intention behind the *Emergencies Act*.

Impact on Individuals' Charter-Protected Rights

52. The reasonableness of the Government's resort to the *Emergencies Act* must also have regard to the substantial, *Charter*-infringing impacts of the regulations that the *Emergency Proclamation* has enabled under s. 19(1) of the *Emergencies Act*.
53. The prohibitions set out in the *Emergency Measures Regulations* — namely, the Prohibition on Public Assembly, the Prohibition on Travel to an Assembly, and the Prohibition on Providing Property — offend fundamental freedoms enshrined in the *Charter*. In so doing, they inhibit basic and essential forms of democratic participation.
54. Each of these Prohibitions infringes s. 2(b) of the *Charter*, which protects freedom of expression. All of the prohibited activities contain expressive content, thereby falling within the protected sphere of free expression. The prohibition of those activities, in both purpose and effect, infringes that protection.
55. The Prohibition on Public Assembly and the Prohibition on Travel to an Assembly infringes s. 2(c) of the *Charter*, which protects freedom of peaceful assembly, for similar reasons. The former prohibition captures any assembly that may be “reasonably expected” to lead to a breach of the peace. In this way, it prohibits assembly *before it occurs* and before it becomes an assembly that *might* fall outside the scope of s. 2(d). By prohibiting assemblies that are by definition peaceful — or that at least have

- not yet become non-peaceful — and by prohibiting individuals (and, effectively, their children) from travelling to attend such assemblies, these prohibitions infringe s. 2(c).
56. Also for similar reasons, the Prohibition on Public Assembly and the Prohibition on Travel to an Assembly infringe s. 2(d) of the *Charter*, which protects freedom of association. These prohibitions prohibit individuals from meeting and forming associations, discouraging the collective pursuit of common goals and striking at the heart of this freedom.
 57. The Prosecution Provision of the *Emergency Measures Regulations* creates an offence punishable by imprisonment for failure to comply, thereby engaging the liberty interests protected by s. 7 of the *Charter*. This offence is not consistent with the principles of fundamental justice of overbreadth and gross disproportionality, as it captures peaceful protest that goes far beyond the objective of the regulations.
 58. The *Emergency Economic Measures Order* likewise creates serious, *Charter*-infringing impacts. Among other things, this regulation requires a battery of financial institutions and businesses to freeze or suspend accounts held by “designated persons” (i.e., persons “engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*”). Moreover, s. 5 of the order conscripts financial institutions into disclosing — to the RCMP or CSIS — whether they are holding property that they believe is owned, held, or controlled by or on behalf of a designated person. As this section requires that the existence of this property and information related to it be delivered to the authorities without judicial authorization or

reasonable and probable grounds, it compels searches that are contrary to s. 8 of the *Charter*.

59. All of these measures are now in force and were also contemplated to varying degrees in the *Emergency Proclamation* itself.
60. The reasonableness of the federal government's decision to enact the *Emergency Proclamation* must have regard to these impacts on individuals' rights and interests. These concerns are central to the necessity of adequate justification — justification that is decidedly lacking here.
61. In light the above legal and factual constraints that bear upon it, the *Emergency Proclamation* is unreasonable and *ultra vires*.

The Emergency Measures Regulations and the Emergency Economic Measures Order Are Inconsistent with the Charter

62. On the basis set out above, each of the Prohibition on Public Assembly, the Prohibition on Travel to an Assembly, the Prohibition on Providing Property and the Prosecution Provision are inconsistent with various of s. 2(b), 2(c), and 2(d), and 7 of the *Charter*.
63. On the basis set out above, s. 5 of the *Emergency Economic Measures Order* is inconsistent with s. 8 of the *Charter*.
64. None of these infringements can be justified under s. 1. The pressing and substantial objective pursued by the regulations at play here must be to end the protests and the blockades and to address their impacts. However, particularly in light of the alternative

measures available and the application of these orders to the entirety of the country, the regulations cannot be said to be minimally impairing of the rights at issue, nor can they be said to be proportionate to their objective.

The CCLA Meets the Test for Public Interest Standing

65. The Applicant, the Canadian Civil Liberties Association (“CCLA”), brings this application on the basis of public interest standing.
66. The CCLA is an independent, non-profit, non-governmental organization that is dedicated to actively defending and promoting the recognition of fundamental human rights and civil liberties.
67. Since its inception in 1964, the CCLA has been holding governments accountable by ensuring those rights and freedoms are fostered and observed and that the rule of law is upheld. It advocates on behalf of all people in Canada to ensure that the critical balance between civil liberties and competing public and private interests are maintained.
68. The CCLA has made vital contributions to civil liberties and *Charter* jurisprudence in a variety of areas, by intervening in cases before courts at many levels. The CCLA has also been granted standing to litigate issues in its own right as a public interest litigant. The CCLA has a distinct, unique awareness and understanding of many aspects of civil liberties, as a result of arguing for the rights of people across Canada for decades.

69. The CCLA has a genuine interest in the issues raised in the Application as they are directly connected to the organization's mandate. The CCLA is engaged closely with these issues through its legal and policy advocacy, public education, and research.
70. Through litigation as a public interest litigant or as an intervenor, the CCLA has gained knowledge and expertise in the civil liberties and constitutional rights engaged by the federal government's invocation of the *Emergencies Act*, particularly in relation to free expression and assembly. CCLA has frequently been involved in litigation and policy debates that implicate the right to protest and consider the permissible nature and scope of state conduct in relation to protest activities.
71. The CCLA has the resources to pursue this judicial review thoroughly, effectively, and expeditiously. The CCLA is being represented by able and experienced counsel with the capacity to manage litigation of this nature. It will present a complete record that will assist this Court in making the findings of fact necessary to resolve the legal questions regarding interpretation of the *Emergencies Act* thresholds that lie at the heart of this case.
72. The immediate effect and serious consequences of the government's decision to invoke the *Emergencies Act* on the rights and freedoms of people across Canada requires an immediate consideration of the legality of that decision. It is reasonable and effective for the CCLA, with its decades of demonstrated interest in, and established expertise regarding, the issues raised in this application, to bring it forward in this timely manner.
73. Such further and other grounds as counsel may advise.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. the Affidavit of Abby Deshman; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

February 18, 2021



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Lawyers for Applicant

This is Exhibit "C" to the Affidavit of Simon Sigler
sworn March 29, 2022.

A handwritten signature in blue ink, appearing to be 'A. Sigler', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Court File No.: T-347-22

FEDERAL COURT

BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Applicant

– and –

ATTORNEY GENERAL OF CANADA

Respondent



Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7.

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 23, 2022

Issued by:

Imrana Ahmed, Registry Officer

Address of local office: 180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: ATTORNEY GENERAL OF CANADA

Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

APPLICATION

This is an Application pursuant to section 18.1 of the *Federal Courts Act*, RSC c F-7 for judicial review of: (a) the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 (“*Emergency Proclamation*”), made pursuant to section 17(1) of the *Emergencies Act*, RSC 1985, c 22 4th Supp (“the *Emergencies Act*”); (b) the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21 (“*Emergency Measures*”), made pursuant to section 19(1) of the *Emergencies Act*; and (c) the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22 (“*Economic Measures*”), made pursuant to section 19(1) of the *Emergencies Act*.

THE APPLICANT MAKES APPLICATION FOR:

1. An order declaring unlawful and quashing the *Emergency Proclamation*.
2. An order declaring unlawful and quashing the *Emergency Measures*.
3. An order declaring unlawful and quashing the *Economic Measures*.
4. An order pursuant to section 52(1) of the *Constitution Act, 1982*, declaring the *Emergency Measures* to be unconstitutional and of no force or effect.
5. An order pursuant to section 52(1) of the *Constitution Act, 1982*, declaring the *Economic Measures* to be unconstitutional and of no force or effect.
6. An order pursuant to Rule 383 of the *Federal Courts Rules*, SOR/98-106 assigning this proceeding to case management.
7. An order pursuant to Rule 306 of the *Federal Courts Rules* to admit the affidavit of Madeleine Ross.
8. An order pursuant to Rule 105 of the *Federal Court Rules* that this proceeding be joined with *Canadian Civil Liberties Association v. Attorney General of Canada*, Court File No. T-316-2.
9. An order directing the Respondent to deliver the Record to the Applicant on an urgent basis pursuant to Rule 317 of the *Federal Courts Rules*, because of the inherently time limited nature of a public order emergency.

10. An order directing the Respondent to deliver those portions of the record to the Applicant over which it asserts any privileges under Rule 318, including pursuant to sections 38 (national security) and 39 (cabinet confidences) of the *Canada Evidence Act*, RSC 1985, c C-5, on an urgent, counsel-only basis pursuant to a confidentiality undertaking, because of the inherently time limited nature of a public order emergency.
11. The hearing of this matter on an expedited basis, because of the inherently time limited nature of a public order emergency.
12. An order that there be no costs of this proceeding.
13. Such further and other relief as counsel may advise and as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

A. Overview

1. This is an urgent Application for Judicial Review of the federal cabinet’s decision to trigger and exercise the extraordinary powers contained in the *Emergencies Act* on February 14 and 15, 2022.
2. The *Emergencies Act* has a dark and troubled history in Canada. The *Emergencies Act* was originally enacted in 1988 to replace the *War Measures Act* (“WMA”), which was used during the Second World War to intern Japanese Canadians and Italian Canadians, and which was abused during the FLQ Crisis in Quebec in 1970. In direct response to this history, the *Emergencies Act* sets out a carefully crafted and demanding set of legally binding conditions that must be satisfied before it may be triggered, to ensure that it is used only as an absolute last resort, and for not a moment longer than necessary.
3. The *Emergencies Act* has never been invoked before. Over the decades since it was passed, Canada has weathered terrorist attacks, economic hardship, and an unprecedented global health pandemic without ever needing to resort to the incredible powers contained in the *Emergencies Act*.
4. The question on this Application is whether the strict legal requirements of the *Emergencies Act* were met before the federal cabinet issued the *Emergency Proclamation*, the

Emergency Measures, and the *Economic Measures*, in response to protests in Ottawa and border blockades.

5. We submit that the answer to that question is that those legal requirements were not met.

6. The *Emergencies Act* vests the federal cabinet with the extraordinary power to unilaterally proclaim a public order emergency. Such a proclamation serves *de facto* as a temporary constitutional amendment. Under the *Emergencies Act*, after the federal cabinet proclaims a public order emergency, vast legislative authority is delegated to the cabinet. This authority encompasses the power to create new criminal offences and police powers, without recourse to Parliament, advance notice or public debate. The *Emergencies Act* also grants the federal cabinet legislative power in core areas of provincial jurisdiction, such as property and civil rights, without any requirement for provincial consultation or consent.

7. Because of its profound effects on Canada's federal democracy, the grave risk of executive overreach, and the government's past abuse of emergency powers that this legislation was specifically intended to prevent, the courts should regard the *Emergencies Act* as a quasi-constitutional statute and interpret it strictly.

8. The federal cabinet did not have reasonable grounds for concluding there was a public order emergency that justified invoking the *Emergencies Act*, no matter how challenging and difficult it perceived the ongoing protests to be. Invoking the *Emergencies Act* was not absolutely necessary, as the law requires. Federal, provincial and municipal law enforcement already had all of the legal tools and authorities they needed to respond to the protests. Their perceived failure to respond effectively does not in itself authorize the government to invoke the *Emergencies Act*. The stringent conditions set by the *Emergencies Act* for declaring a public order emergency, and thus triggering the vast powers contemplated by the *Emergencies Act*, were not met.

9. In addition, the *Emergency Measures* and the *Economic Measures* violate the *Charter*. First, the prohibitions created by the *Emergency Measures* impose the threat of fine or imprisonment on a broad range of conduct, and, in so doing, risk a chilling effect on otherwise legitimate forms of expression. Second, the *Economic Measures* require banks to disclose otherwise private banking information to the police. Under the law, this amounts to a warrantless and unreasonable search of the private banking information of Canadian citizens. Both the

Emergency Measures and the *Economic Measures* create clear violations of sections 2, 7 and 8 of the *Charter*, and do not constitute reasonable limits that can be demonstrably justified in a free and democratic society.

B. Chronology of Key Events Leading up to the invocation of the *Emergencies Act*

i) Ottawa Protests: Before the Emergency Proclamation

10. On January 28, 2022, the “Freedom Convoy 2022” (“Convoy”) arrived in Ottawa. The Convoy was comprised of people from across Canada who intended to protest Canada’s public health response to the COVID-19 pandemic and the new vaccination requirements for cross-border truckers.¹ The Convoy’s arrival in Ottawa was not a surprise. Its route to Ottawa was widely publicized.²

11. Over the ensuing days, the protests in Ottawa grew. The blocking of public roadways by protestors violated both the *Criminal Code* and the *Highway Traffic Act*, RSO 1990 c H.8. Mischief under section 430 of the *Criminal Code*, for example, makes it a criminal offence for someone to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property.

12. On January 31, 2022, Prime Minister Trudeau spoke with Ottawa Mayor Jim Watson about the Convoy and its illegal occupation of the downtown core.

13. By February 5, 2022, the Royal Canadian Mounted Police (“RCMP”) had provided “fresh reinforcements” to the Ottawa Police Service (“OPS”) at its request, in the form of 257 officers, from its detachment in Ottawa.³ The RCMP National Headquarters is also located in Ottawa.

14. The next day, on February 6, 2022, the City of Ottawa declared a state of emergency. Ontario Premier Doug Ford told the press that the provincial government was supporting Ottawa in whatever way it could, but that Ottawa had not asked the province to request military aid from the federal government.⁴

¹ Exhibit A, Affidavit of Madeleine Ross.

² Exhibit B, Affidavit of Madeleine Ross.

³ Exhibit C, Affidavit of Madeleine Ross.

⁴ Exhibit D, Affidavit of Madeleine Ross.

15. On February 7, 2022, the first of several trilateral meetings took place between the federal government, Mayor Watson, and the Ottawa Police Chief.⁵ Mayor Watson also wrote to the federal government asking for an additional 1800 RCMP and Ontario Provincial Police (“OPP”) officers.⁶

16. On February 12, 2022, the OPS announced the establishment of an enhanced “Integrated Command Centre” (ICC) that brought together the OPS, OPP and RCMP in response to the protests in Ottawa, “to coordinate enforcement” and “to make the most effective use of the additional resources our policing partners have provided us”, which “will result in a significantly enhanced ability of our police service to respond to the current situation in our city.”⁷

17. On February 15, 2022, Justice McWatt of the Ontario Superior Court of Justice issued an interlocutory injunction pursuant to s. 440 of the *Municipal Act*, RSO 1990, c M.45, in response to an application brought by the City of Ottawa, enjoining individuals from breaching the following By-laws of the City of Ottawa: Open Air Fire By-law 2004-163, Fireworks By-law 2003-237, Noise By-law 2017-255, Use and Care of Roads By-law 2003-498, and the Idling Control By-law 2007-266.⁸

18. Following the establishment of the ICC, and with the help of the additional resources provided by the OPP and the RCMP, the OPS began charging protestors. The charges include:

- (a) Tyson Billings: charged under the *Criminal Code* with mischief (section 430), counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464), obstruct police (section 129) and counselling to commit the offence of obstruct police (section 464).⁹
- (b) Patrick King: charged under the *Criminal Code* with mischief (section 430), counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464) and counselling to commit the offence of obstruct police (section 464).¹⁰
- (c) Tamara Lich: charged under the *Criminal Code* with counselling to commit the offence of mischief (section 464).¹¹

⁵ Exhibit E, Affidavit of Madeleine Ross.

⁶ Exhibit F, Affidavit of Madeleine Ross.

⁷ Exhibit H, Affidavit of Madeleine Ross.

⁸ Exhibit Z, Affidavit of Madeleine Ross.

⁹ Exhibit G, Affidavit of Madeleine Ross.

¹⁰ Exhibit I, Affidavit of Madeleine Ross.

¹¹ Exhibit J, Affidavit of Madeleine Ross.

- (d) John Barber: charged under the *Criminal Code* with counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464) and counselling to commit the offence of obstruct police (section 464).¹²

19. As of February 21, 2022, Ottawa police had arrested and charged 196 people pursuant to offences under the *Criminal Code* and had towed 115 trucks.¹³ It is unclear whether even a single protester in Ottawa was charged with any offences created by the *Emergency Measures*.

ii) *Blockade of the Ambassador Bridge in Windsor, Ontario*

20. On February 7, 2022, protestors began a blockade at the Ambassador Bridge in Windsor. The bridge is Canada's busiest border crossing with the United States. Windsor Police responded immediately with a large police presence to monitor the demonstrations.

21. The next day, on February 8, 2022, Windsor Police issued a press release warning protesters that those "found committing crimes and acts of violence will be investigated and charges will be laid" and that steps taken would include "enforcement of traffic related offences and investigating any criminal acts."¹⁴

22. Two days later, the Windsor Police issued a press release explicitly outlining the various criminal offences that the protestors were potentially committing:

The Windsor Police Service wants to make demonstrators clearly aware that it is a criminal offence to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property. The offence itself is known as mischief to property. The unlawful act of blocking streets at and near the Ambassador Bridge is resulting in people being denied the lawful use, enjoyment and operation of their property and causing businesses to close down. We are providing notice that anyone blocking streets or assisting others in the blocking of streets may be committing a criminal offence and must immediately cease further unlawful activity or you may face charges. You could be arrested if you are a party to the offence or assisting others in the direct or indirect commission of this offence. Vehicles or other property related to an offence may be seized. Once a vehicle is seized, it may be detained and, following a conviction, possibly forfeited.¹⁵

23. On February 10, 2022, Prime Minister Trudeau spoke with the Mayor of the City of Windsor and had another call with the Premier of Ontario Doug Ford. It is unclear what if any

¹² Exhibit K, Affidavit of Madeleine Ross.

¹³ Exhibit L, Affidavit of Madeleine Ross.

¹⁴ Exhibit M, Affidavit of Madeleine Ross.

¹⁵ Exhibit N, Affidavit of Madeleine Ross.

assistance Windsor sought from the federal government, and what the federal government's response was. That same day, auto industry groups with the support of the City of Windsor sought an injunction from the Ontario Superior Court of Justice to end the blockade.

24. On February 11, 2022, Chief Justice Morawetz granted the injunction, and ordered that the “Police or designated agents shall have authorization to remove any vehicles, personal property, equipment, structures, or other objects that impede or block access to the Ambassador Bridge and approaching roadways.”¹⁶

25. By February 13, 2022, without any resort to the *Emergencies Act*, the Ambassador Bridge was fully reopened.

26. According to the Windsor Police, from February 7 to 13, 2022, 90 people were arrested and charged. The charges were laid under existing *Criminal Code* offences and included: 43 people charged with breaching a court order (section 127); 43 people charged with mischief over \$5,000 (section 430); one person charged with obstructing justice (section 139); one person charged with failing to attend court (section 145); and one person charged with dangerous driving (section 320.13). One person is facing a *Highway Traffic Act* charge for failing to remain (section 200(1)(a)).¹⁷

iii) Blockade in Coutts, Alberta

27. On January 29, 2022, a blockade began in Coutts, Alberta at the United States-Canada border. The Coutts protest was widely publicized. Alberta RCMP were aware of the planned blockade and had some time to plan their own response, which included having RCMP officers at the border for the duration of the blockade.¹⁸

28. On February 5, 2022, the Alberta Minister of Municipal Affairs, the Honourable Ric McIver, wrote a letter to the federal Minister of Public Safety, Marco Mendicino, and federal Minister of Emergency Preparedness, William Blair. Mr. McIver explained that Alberta's plan going forward was for the RCMP and partner law enforcement agencies to remove demonstrators and bystanders, which would allow for the removal of the vehicles and equipment obstructing the

¹⁶ Exhibit O, Affidavit of Madeleine Ross.

¹⁷ Exhibit FF, Affidavit of Madeleine Ross.

¹⁸ Exhibit P, Affidavit of Madeleine Ross.

highway. The only support that Mr. McIver sought from federal authorities was “provisions” in the form of equipment and personnel: “To support this approach, I am requesting federal assistance that includes the provision of equipment and personnel to move approximately 70 semi-tractor trailers and approximately 75 personal and recreational vehicles from the area.”¹⁹ It is unclear whether and how the federal government responded to Mr. McIver’s request.

29. On February 14, 2022, the Alberta RCMP executed search warrants and arrested several people involved in the Coutts protest. The arrests all appear to have taken place under the authority of the *Criminal Code* or provincial legislation. That day, the Alberta RCMP cleared the blockade and restored the border crossing.

iv) *Blockade at Sarnia Blue Water Bridge, Ontario*

30. On February 8, 2022, two groups of protests blocked the provincial highway leading to and from the Sarnia Blue Water Bridge, a border crossing. However, ten hours later, the OPP was able to clear the blockade and restore access to the border.

31. On February 9, 2022, a group created a highway blockade approximately 30 kilometres east of Sarnia on the provincial highway. Five days later, on February 14, 2022, the blockade was stopped and access to the highway was restored.

v) *Blockade at Emerson, Manitoba*

32. On February 10, 2022, protesters began blocking the Canada-United States border at the port of entry at Emerson, Manitoba. The next day, Manitoba Premier Heather Stefanson wrote to Prime Minister Trudeau seeking immediate and effective federal action regarding the blockade. Premier Stefanson did not specify what the federal action should look like, but she did welcome discussion on potential “federal-provincial collaborative action”.²⁰

33. By February 16, 2022, the blockade was completely cleared. In a press release, the RCMP explained that throughout the previous six days, officers used “open communication, and a measured approach to find a peaceful resolution to [the] situation” and said that because of these efforts, it had been able to coordinate and escort vehicles out of the area. The press release also

¹⁹ Exhibit Q, Affidavit of Madeleine Ross.

²⁰ Exhibit S, Affidavit of Madeleine Ross.

noted that in successfully clearing the blockade, the Manitoba RCMP worked collaboratively with the CBSA, US Customs and Border Protection, and Manitoba Transportation and Infrastructure.²¹

vi) *Blockade at the Peace Bridge at Fort Erie, Ontario*

34. On February 12, 2022, a protest targeted the Peace Bridge port entry at Fort Erie, Ontario. The protest disrupted inbound traffic at the border for part of that day, and then outbound traffic until February 14, 2022, by which date the Niagara Police cleared the blockade and restored access to the border.²²

vii) *Blockade in Surrey, British Columbia*

35. On February 12, 2022, several vehicles broke through an RCMP barricade in Surrey, British Columbia on their way to the Pacific Highway port of entry. Protesters forced the highway to close at the Canada-United States border in Surrey. On February 13, 2022, the Surrey RCMP arrested four protesters for “mischief”.²³ By February 19, 2022, the border had reopened.²⁴

viii) *Ontario Measures in Response to the Protests and Blockades*

36. On February 11, 2022, the Province of Ontario declared a state of emergency pursuant to O.Reg. 69/22 under the *Emergency Management and Civil Protection Act*, RSO 1990, c E9.²⁵ At a press conference, Premier Ford said that he would convene cabinet and “urgently enact orders that will make crystal clear it is illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.”²⁶ On February 12, 2022, the Ontario government confirmed the state of emergency (O. Reg. 70/22)²⁷ and promulgated O.Reg. 71/22, making it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.²⁸

²¹ Exhibit R, Affidavit of Madeleine Ross.

²² Exhibit A at p. 8, Affidavit of Madeleine Ross.

²³ Exhibit T, Affidavit of Madeleine Ross.

²⁴ Exhibit U, Affidavit of Madeleine Ross.

²⁵ Exhibit AA, Affidavit of Madeleine Ross.

²⁶ Exhibit V, Affidavit of Madeleine Ross.

²⁷ Exhibit DD, Affidavit of Madeleine Ross.

²⁸ Exhibit EE, Affidavit of Madeleine Ross.

37. On February 20, 2022, the Province of Ontario brought an application in the Superior Court of Justice for an order pursuant to section 490.8 of the *Criminal Code*. The Court issued the order, which prohibited people from disposing, or otherwise dealing with, donations made through the Freedom Convoy and Adopt-a-Trucker campaign pages on the “GiveSendGo” online fundraising platform.²⁹

ix) *Nova Scotia Measures in Response to the Blockades*

38. On January 28, 2022, the Nova Scotia Minister of Municipal Affairs and Housing issued Direction 22-003 (road blockade ban) pursuant to section 14 of the *Emergency Management Act*, SNS 1990, c 8, prohibiting protests from blockading a highway near the Nova Scotia-New Brunswick border. Failure to comply with the Direction could result in a summary conviction with fines between \$3000 and \$10 000 for individuals.³⁰

39. On February 4, 2022, the Nova Scotia Attorney General and Minister of Justice promulgated N.S. Reg. 16/2022, pursuant to section 8 of the *Summary Proceedings Act*, RNS, c 450, to make the prohibitions in Direction 22-003 (road blockade ban) summary conviction offences.³¹

x) *The Deputy Director of FINTRAC Testifies at the House of Commons Regarding the Protests and Blockades*

40. On February 10, 2022, Barry McKillop, the Deputy Director of Intelligence of the Financial Transactions and Reports Analysis Centre (“FINTRAC”), testified at the House of Commons Public Safety and National Security Committee about the protests taking place across the country, and the concerns about how these protests were being funded.

41. Mr. McKillop explained that while crowdfunding sites are not a regulated money service business (“MSB”) under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, when those sites transact with or through businesses that are MSBs, e.g., payment processing platforms such as Stripe or PayPal, those MSBs would be able to submit reports identifying transactions that are suspicious and would submit such reports to FINTRAC.³² Mr.

²⁹Exhibit W, Affidavit of Madeleine Ross. See also Exhibit GG, Affidavit of Madeleine Ross.

³⁰ Exhibit BB, Affidavit of Madeleine Ross.

³¹ Exhibit CC, Affidavit of Madeleine Ross.

³² Exhibit X, Affidavit of Madeleine Ross, at 13:43:18 to 13:43:50.

McKillop testified that to date, FINTRAC had not seen a spike in suspicious transaction reporting in relation to the Ottawa protests.³³

C. The History of the *Emergencies Act*

42. The exercise of emergency powers by the federal cabinet has been deeply troubled throughout Canada's history. The *War Measures Act* was the direct predecessor to the *Emergencies Act* and was in force between 1914 and 1988.³⁴ During that time, Canada spent close to two decades under federal emergency legislation.

43. Professor Patricia Peppin of Queen's University's Faculty of Law describes that the *War Measures Act* "superseded all existing laws, provided overarching powers for cabinet to govern through regulation, and permitted overriding the normal operation of the federal system." Ultimately, the act was used to support censorship and to permit internment:

The *War Measures Act* was used to impose censorship, to outlaw socially unacceptable organizations, to legalize retroactively the actions taken by the military during the Quebec City conscription riots, to impose preventive detention, to allow the deportation of Canadian-born people of Japanese ancestry, to permit the internment of thousands of Japanese Canadians, to authorize the confiscation of Japanese Canadians' property under the guise of expropriation for compensation, the registration and internment of alien enemies in both World Wars, and the detention of persons who belonged to 'unlawful associations' like the Communist Party.³⁵

44. The *Emergencies Act* was drafted to ensure these abuses never happened again by protecting parliamentary democracy, federalism, and individual rights. The overarching principle behind the specific provisions of the *Emergencies Act* is proportionality. Every provision of the Act is designed with the intent of limiting the federal cabinet's power to declare an emergency to only those situations where it is absolutely necessary, to grant to the cabinet only the powers it needs to deal with the particular emergency, and for the powers to exist for only as long as the emergency exists.

³³ Exhibit X, Affidavit of Madeleine Ross, at 13:54:00 to 13:54:36.

³⁴ The *War Measures Act* was in fact a series of statutes – the *War Measures Act, 1914*, SC 1915; *War Measures Act*, R.S.C. 1927, c 206; *National Emergency Transitional Powers Act, 1945*, SC 1945; *National Emergency Transitional Powers Act, 1945*, SC 1945; *Emergency Powers Act, 1951*, c 5 and SC 1952-53, c 33; *War Measures Act*, RSC 1970, c W-2; and the *Public Order (Temporary Measures) Act 1970*, SC 1970-72, c 2.

³⁵ Exhibit Y, Affidavit of Madeleine Ross.

45. The Act defines a “national emergency” as “an urgent and critical situation of a temporary nature that”:

- (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it; or
- (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada”; and
- (c) “cannot be effectively dealt with under any other law of Canada”.

46. The Act creates four different kinds of national emergencies: public welfare emergencies, public order emergencies, international emergencies, and war emergencies. Each type of emergency must satisfy additional conditions before the federal cabinet can proclaim it. Each type of emergency confers different powers on the federal cabinet.

47. In this case, federal cabinet has proclaimed a public order emergency. A public order emergency is “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency” (section 16). “Threats to the security of Canada”, in turn, are defined by the *Canadian Security Intelligence Security Act*, RSC 1985, c C-23, section 2 as:

- (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage;
- (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- (d) activities directed toward undermining by covert unlawful acts or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

48. The federal cabinet may declare a public order emergency if it “believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency” (section 17).

49. When a declaration of public order emergency is in effect, the federal cabinet may make “orders or regulations” on the following matters if it “believes, on reasonable grounds” that such measures “are necessary for dealing with the emergency” (section 19(1)):

- (a) the regulation or prohibition of:

- (i) any public assembly that may reasonably be expected to lead to a breach of the peace,
- (ii) travel to, from or within any specified area, or
- (iii) the use of specified property;
- (b) the designation and securing of protected places;
- (c) the assumption of the control, and the restoration and maintenance, of public utilities and services;
- (d) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and
- (e) the imposition:
 - (i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or
 - (ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment,
 for contravention of any order or regulation made under this section.

D. The *Emergency Proclamation, Emergency Measures, and Economic Measures*

50. The federal government issued the *Emergency Proclamation* on February 14, 2022. The Proclamation declared that a public order emergency exists “throughout Canada” and “necessitates” the taking of special temporary measures for dealing with the emergency.

51. The *Emergency Proclamation* describes the “emergency” as consisting of five elements:

- (a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada;
- (b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings;
- (c) the adverse effects resulting from the impacts of the blockades on Canada’s relationship with its trading partners, including the United States, that are detrimental to the interests of Canada;

- (d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number; and
- (e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

52. The *Emergency Proclamation* goes on to describe the special temporary measures as consisting of:

- (a) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure;
- (b) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and the provision of reasonable compensation in respect of services so rendered;
- (c) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade;
- (d) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference;
- (e) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and
- (f) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

53. The House of Commons confirmed the *Emergency Proclamation* on February 21, 2022.

54. The *Emergency Measures* and the *Economic Measures* were promulgated on February 15, 2022. Together, they set out the prohibitions and powers created by the invocation of the *Emergencies Act*.

55. The *Emergency Measures* creates four prohibitions:

- (a) A person must not participate in a public assembly that may reasonably lead to a breach of peace or causing a person under the age of 18 to participate in such an assembly, by the serious disruption of the movement of persons or goods or the serious interference with trade the interference with the functioning of critical infrastructure, or the support of the threat or use of acts of serious violence against persons or property (section 2);
- (b) A foreign national must not enter Canada with the intent to participate in or facilitate such an assembly (section 3);
- (c) A person must not travel to or within an area where such an assembly is taking place, or causing a person under the age of 18 to travel to, or within 500 metres of such an assembly (section 4); and
- (d) A person must not, directly or indirectly, use collect, provide, make available or invite a person to provide property to facilitate or participate in such an assembly, or for the purpose of benefiting any person who is facilitating or participating in such an assembly (sections 5).

56. The *Emergency Measures* also direct people, in exchange for fair compensation, to assist the Minister of Public Safety and Emergency Preparedness, the Commissioner of the RCMP, or anyone acting on their behalf, with removing, towing and storing any objects that are part of a blockade (sections 7, 8 and 9).

57. A failure to comply with the *Emergency Measures* allows for prosecution on summary conviction or by indictment. Summary prosecution carries a possible punishment of a fine not exceeding \$5,000 or imprisonment not exceeding 6 months. Prosecution by indictment carries a possible punishment of a fine not exceeding \$5000 or a term of imprisonment not exceeding 5 years (section 10(2)).

58. The *Economic Measures* require financial “entities” listed therein (section 3) to cease dealing in any property that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of a “designated person”; cease facilitating any related transactions; cease making available property (including funds or virtual currency); and cease providing any financial or related services to or for the benefit of a designated person (section 2). A designated person is someone who is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures* (section 1).

59. The *Economic Measures* also require entities to determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of a

“designated person” (section 3). Entities are required to register with FINTRAC and to report every suspicious financial transaction (section 4), and to disclose to the Commissioner of the RCMP the existence of property in their possession or control that they have “reason to believe” is owned, held or controlled by or on behalf of a designated person and any information about a transaction or proposed transaction in relation to this property (section 5). The *Economic Measures* offer no guidance on how the entities should interpret the phrase “reason to believe”. They immunize the entities from civil liability when complying with the *Economic Measures*.

E. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* are unlawful

60. The *Emergency Proclamation* and *Emergencies Measures* are unlawful because they do not meet the key requirement of necessity in the *Emergencies Act*. It simply cannot be established that the situation that the invocation of the *Emergencies Act* was intended to address could not have been handled effectively under existing Canadian law.

61. One of the key justifications for invoking the *Emergencies Act* was the impact that border blockades were having on international trade and international relations. But in reality, the border blockades at the Ambassador Bridge, Coutts, Emerson, the Peace Bridge, Sarnia, and Surrey were cleared by police using existing provisions under the *Criminal Code* and provincial laws, including *Highway Traffic Act* legislation. The blockades were all effectively resolved without recourse to the powers granted by the *Emergencies Measures*, and there are currently no border blockades.

62. In clearing the border blockades, every single charge the police have laid thus far has been under the *Criminal Code* and existing provincial legislation, and not a single charge has been laid using the allegedly indispensable new offences created under the *Emergencies Act*.

63. Future border blockades can be effectively addressed in the same way, through the use of existing legislation and the exercise of existing federal and provincial authority. Recourse to the extraordinary powers granted by the *Emergencies Measures* is simply not necessary.

64. Similarly, to address the protests in Ottawa, the federal government already had the power to provide officers to the Ottawa Police Service and to establish a joint command with the OPS and OPP in Ottawa, and it in fact did exercise these powers prior to the *Emergency Proclamation*. In addition, section 129(b) of the *Criminal Code* makes it an offence for a person, without

reasonable excuse, to refuse to assist a police officer in the execution of their duty. This could apply to tow truck drivers who refuse to assist police by making their vehicles available as needed to preserve the peace.

65. Again, the efficacy of existing legislation and authority in addressing the protests in Ottawa is made clear by the fact that every single charge that was laid when the police moved in to end the blockades was laid under existing *Criminal Code* provisions. Not a single charge has been laid pursuant to the *Emergency Measures*.

66. The federal and provincial government also already had the ability to take steps to limit the financing of future illegal protests. The existing authority of FINTRAC over payment processing platforms already requires these platforms to report suspicious transfers to and from crowdfunding sites. In addition, the Attorney General already has the power to make an application for a restraint order under section 490.8 of the *Criminal Code*, which would prevent a person from disposing of, or otherwise dealing with, any interest in offence-related property.

67. When Parliament passed the *Emergencies Act* in 1988, it did so in full recognition of this country's dark history of abuse under the *War Measures Act*. It specifically sought to make sure the *Emergencies Act* would not be used unless it was absolutely necessary, and it stipulated that the powers under the *Emergencies Act* should never be invoked unless existing law was truly incapable of dealing with the problem. There is simply no evidence that this standard was met in this case. In fact, the way in which the protests were actually dealt with and resolved gives us every reason to believe that resort to the *Emergencies Act* was unnecessary.

F. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* Violate the *Charter*

68. One of the reasons why emergency powers ought to be invoked only in extraordinarily rare circumstances is that emergency powers often lead to abuses of individual rights. Canada's history under the *War Measures Act* provides ample evidence of that. In this case, the reasonableness of the Government's invocation of the *Emergencies Act* must take into account whether the *Emergency Measures* and the *Economic Measures* violate the *Charter*. Both sets of measures create serious violations of core democratic rights and other freedoms, under sections 2, 7, and 8 of the *Charter*.

i) *Section 2 of the Charter*

69. Sections 2, 4 and 5 of the *Emergency Measures*, and section 2 of the *Economic Measures*, all violate the core democratic rights to freedom of expression, association, and assembly guaranteed by sections 2(b), (c), and (d) of the *Charter*.

70. The rights to expression, assembly, and association created by section 2 of the *Charter* have been interpreted purposively, in the broadest possible terms. The *Emergency Measures'* prohibitions on attending assemblies and engaging in fundraising — as either a donor or a solicitor of donations — amount to clear cut violations of these rights. Similarly, section 2 of the *Economic Measures* is designed to discourage and prevent participation in these constitutionally protected activities, which also amounts to a violation of these rights. It will therefore fall to the government to justify these violations under section 1 of the *Charter*.

71. Under section 1, these prohibitions will fail because they are not minimally impairing, and their deleterious effects outweigh their salutary benefits. Section 2 of the *Emergency Measures* criminalizes participation in a demonstration that *might* — in the future — “reasonably be expected to lead to a breach of the peace.” The *Emergency Measures* provide no guidance on how to determine whether a breach of the peace can be “reasonably expected.”

72. It is clear that these measures have been invoked in response to protests against government measures taken in response to the COVID-19 pandemic — and in particular the use of illegal blockades during these protests. Going forward, however, it is entirely unclear how the government will enforce the *Emergency Measures* and *Economic Measures*, and what evidence or intelligence will be used to satisfy a reasonable belief that a breach of the peace might occur. For example, if protests were organized in response to the government’s invocation of the *Emergencies Act*, would it be possible for the government and the police to conclude there is a reasonable expectation that a breach of the peace might occur at these protests, given what has just taken place in the previous protests? Reasoning along these lines is not far-fetched, and it risks chilling legitimate speech and demonstration by instilling fear in those who might otherwise wish to participate in lawful demonstrations against government actions.

73. It also seems clear from the wording of the *Emergency Measures* that someone could be charged and convicted of an offence under this section for participating in a demonstration that

never actually resulted in a breach of the peace. This is because the provision does not merely criminalize or prohibit participation in a demonstration where a breach of the peace actually occurs, . Rather, it targets situations where it is reasonably believed such a breach might occur.

74. Similarly, the section draws no distinction between those protestors who actually participate in a breach of the peace, and those who do not. The only intent required by the prohibition is an intention to participate in the public assembly as a whole — and not the actual breach of the peace that *might* possibly occur. In other words, if someone attends a public demonstration with the sole intention of standing on the front lawn of Parliament holding up a sign expressing their opinion, they would be guilty of a criminal offence if other protestors decided to block the roads in a way that offended the prohibition. Similarly, they would be guilty of an offence if it could simply be reasonably expected that an event might occur, even if it does not actually occur, and even if they had no intention of participating in such an event did it occur.

75. This prohibition is not minimally impairing because it goes further than necessary. Instead of targeting actually unlawful conduct that constitutes a breach of the peace, it prohibits any participation — even peaceful participation — in a protest where state officials “reasonably believe” a breach of the peace might occur.

76. Sections 4 and 5 of the *Emergency Measures*, and section 2 of the *Economic Measures*, rely on the same definition of unlawful assembly, and similarly fail to minimally impair *Charter* rights as a result.

ii) *Section 7 of the Charter*

77. Sections 2, 4 and 5 of the *Emergency Measures* violate section 7 of the *Charter*. These prohibitions are deprivations of the right to liberty because they carry with them the threat of significant jail sentences. These deprivations are not in accordance with the principles of fundamental justice, because they are overbroad and/or have effects that are grossly disproportionate to the objectives of the prohibition.

iii) *Section 8 of the Charter*

78. Sections 4 and 5 of the *Economic Measures* violate section 8 of the *Charter*. Section 4 requires financial institutions to register with FINTRAC if they are in possession of property that

is owned by or held on behalf of a person who has participated in an unlawful assembly (i.e. a “designated person” under the *Economic Measures*) and to report to FINTRAC if they have reasonable grounds to suspect that a transaction has been conducted relating to the commission of a money laundering or terrorism related offence. Section 5 requires financial institutions to report to the RCMP and to CSIS “the existence of property in their possession or control” that they have reason to believe is owned, held or controlled by or on behalf of a person who is participating in an unlawful assembly.

79. Canadian citizens and permanent residents enjoy a reasonable expectation of privacy over the information that banks hold about them, including the details of the accounts that they hold, the funds they possess, and the ways they spend their money. By requiring financial institutions to provide such information to CSIS and to the RCMP, these provisions of the *Economic Measures* constitute a search.

80. These search provisions violate section 8 of the *Charter* because they do not comply with the Supreme Court’s decision in *Hunter v. Southam*, [1984] 2 SCR 145. *Hunter v. Southam* held that for a statutory provision authorizing a search to be reasonable under the *Charter*, it must require prior judicial authorization based on reasonable grounds. Sections 4 and 5 of the *Economic Measures* do not make any provision for prior judicial authorization before the search takes place, nor do they define the standard upon which a financial institution must satisfy itself that it is dealing with a “designated person” before turning that person’s financial information over to CSIS and the RCMP.

G. The Canadian Constitution Foundation Meets the Test for Public Interest Standing

81. The Canadian Constitution Foundation (CCF) brings this application on the basis of public interest standing. The federal government’s invocation of the *Emergencies Act* has a serious effect on the constitutional rights and freedoms of Canadians across the country.

82. Founded in 2002, the CCF is an independent, national, and non-partisan registered charity whose mission is to protect constitutional freedoms. The CCF furthers this mission through education, communication, and litigation.

83. In keeping with its mandate, the CCF has accumulated significant public interest litigation experience. The CCF has appeared before all levels of court in Ontario and Canada and has made

significant contributions to constitutional law jurisprudence. The CCF has been granted intervener status by the Supreme Court of Canada in 13 cases.

84. The CCF has also been granted standing to litigate issues in its own right as a public interest litigant. Just last year, the CCF was the applicant on a successful constitutional challenge to various provisions of the *Elections Act*, in *Canadian Constitution Foundation v. Canada (Attorney General)*, 2021 ONSC 1224.

85. The CCF has a genuine interest in this Application because it is directly connected to the organization's protective mandate. The CCF also has the experience and expertise needed to efficiently and effectively conduct the litigation surrounding this judicial review. The CCF has started similar actions before, knows what will be involved, and has the resources to pursue this Application.

86. The invocation of the *Emergencies Act* and its impact on the constitutional rights of all Canadians creates an urgent need for this Application and a consideration of the legality of the underlying decision. The CCF will use its expertise and experience to ensure the issues are raised and resolved through expeditious proceedings.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL

70. Affidavit of Joanna Baron dated February 22, 2022;

71. Affidavit of Madeleine Ross dated February 22, 2022;

72. Such further and additional materials as the Applicant may advise and this Honourable Court may allow.

Rule 317 Request: The Applicant requests that the Respondent send certified copies of the following materials that are not in the possession of the Applicant, but are in the possession of the Respondent, to the Applicant and the Registry:

1. The record of materials before the Governor in Council in respect of the *Emergency Proclamation*.
2. The record of materials before the Governor in Council in respect of the *Emergency Measures*.

3. The record of materials before the Governor in Council respect of the *Economic Measures*.

February 22, 2022



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Counsel for the Applicant

This is Exhibit "D" to the Affidavit of Simon Sigler
sworn March 29, 2022.

A handwritten signature in blue ink, appearing to be "A. Sigler", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)



Court File No.: T-382-22

FEDERAL COURT

JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD RISTAU

Applicants

- and -

GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA, ATTORNEY GENERAL
OF CANADA, and MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

APPLICATION UNDER Sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and Rules 301
of the *Federal Courts Rules*.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the
Applicants appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the
Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as
requested by the Applicants. The Applicants requests that this application be heard at Ottawa,
Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the
application or to be served with any documents in the application, you or a solicitor acting for you
must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and
serve it on the Applicants' solicitor, or where the Applicants is self-represented, on the Applicants,
WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other
necessary information may be obtained on request to the Administrator of this Court at Ottawa
(telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

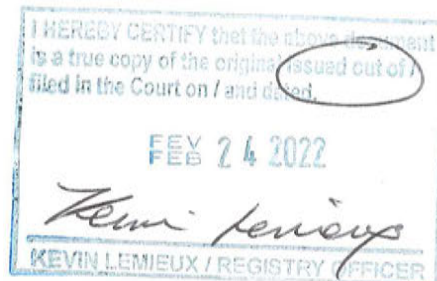
Date: February 23, 2022

ORIGINAL SIGNED BY
KEVIN LEMIEUX
A SIGNÉ L'ORIGINAL

Issued by: _____
(Registry Officer)

Address of local office: Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
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TO: Attorney General of Canada
Civil Litigation Section
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APPLICATION

1. This is an Application for Judicial Review pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act* R.S.C., 1985, c. F-7 of the Respondents' declaration that a "public order emergency" exists under s.17(1) of the *Emergencies Act* (R.S.C., 1985, c. 22 (4th Supp.)) (the "**Emergencies Act**"). Specifically, the Applicants seek judicial review of the Order-in-Council subject title "Special Temporary Measures for Public Order Emergency" issued February 14, 2022 with PC Number 2022-0106 (hereinafter the "**Valentine's Day Declaration**").

2. Further, and in the alternative, this is an Application for Judicial Review pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act* R.S.C., 1985, c. F-7 of the Respondent's regulations passed under s.19(1) of the *Emergencies Act*. Specifically, the Applicants seek judicial review of the Order-in-Council subject title "Emergency Economic Measures Regulations" issued February 15, 2022, with PC Number 2022-0107 and thereafter made into regulation SOR/ 2022-0021 (hereinafter the "**February 15 Regulations**").

3. Further, and in the alternative, this is an Application for Judicial Review pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act* R.S.C., 1985, c. F-7 of the Respondent's Order-in-Council passed under s.19(1) of the *Emergencies Act*. Specifically, the Applicants seek judicial review of the Order-in-Council subject title "Emergency Measures Order" issued February 15, 2022, with PC Number 2022-0108 and thereafter made into regulation SOR/ 2022-0022 (hereinafter the "**February 15 Economic Order**").

4. Further, and in the alternative, this is an Application for a declaration of invalidity of any or all of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order.

5. Further, and in the alternative, this is an Application for a declaration that the *Emergencies Act* is inconsistent with s.91, s.92 and s.96 of the *Constitution Act*, 1867, 30 & 31 Vict, c 3 (the "**Constitution Act, 1867**") and s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the "**Charter**" and "**Constitution**").

Act, 1982", respectively), and to the extent of those inconsistencies, is of no force and effect pursuant to s.52(1) of the *Constitution Act, 1982*.

6. Further, this an Application for interlocutory relief pursuant to s.18.2 of the *Federal Courts Act* for an injunction, stay, or order in the nature of a writ of *prohibition* prohibiting or enjoining any or all of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order from having legal effect until the herein proceedings are complete.

7. The Applicants state, and the fact is, the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order, collectively or individually:

- (a) are *ultra vires* the provision of the *Emergencies Act* or any other enabling statute or instrument;
- (b) are *ultra vires* s.91 of the *Constitution Act, 1867*;
- (c) violate s.96 of the *Constitution Act, 1867*;
- (d) violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Charter*;
- (e) violate s.1 of *Canadian Bill of Rights* S.C. 1960, c. 44;
- (f) violate constitutional principles, specifically rule of law, constitutionalism, parliamentary sovereignty, separation of powers, and contractual expectations (hereinafter "**constitutional principles**");
- (g) violate the preamble of the *Emergencies Act*;
- (h) violate the *International Covenant on Civil and Political rights*, specifically Articles 1(2), 2, 4, 5, 7, 8, 9, 10(1), 12(1), 16, 17, 18, 19, 22(1), 26 and 47;
- (i) violate the *International Covenant on Economic, Social and Cultural Rights*, specifically Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25; and
- (j) violate international law obligations, specifically principles of customary international law including the general principle of the rule of law, the principle of non-discrimination, the United Nations Declaration of Human Rights, freedom from fear and international human rights norms (hereinafter "**international law obligations**").
- (k) violate the *Vienna Convention on the Law of Treaties*.

As a result, the Applicants make this application for:

8. The following relief:

- (a) An order abridging the time for the service of this Application, if necessary;
- (b) An order for an expedited hearing;
- (c) An order pursuant to section 18.1(3)(a) of the *Federal Courts Act* quashing, any or all, of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order;
- (d) A declaration that any or all of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are *ultra vires* the provision of the *Emergencies Act* or any other enabling statute or instrument;
- (e) A declaration pursuant to section 52(1) of the *Constitution Act*, 1982, that any or all, of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are of no force and effect to the extent of their inconsistency with any or all of s.91, s.92 and s.96 of the *Constitution Act*, 1867; s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Canadian Charter of Rights and Freedoms* as read in conformity with Articles 1(2), 2, 4, 5, 7, 8, 9, 10(1), 12(1), 16, 17, 18, 19, 22(1), 26 and 47 of the *International Covenant on Civil and Political Rights*; Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant on Economic, Social and Cultural Rights*, and constitutional principles and international law obligations;
- (f) A declaration that any or all, of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are construed and applied as not to abrogate, abridge or infringe or authorize the abrogation, abridgment or infringement of any of the rights or freedoms recognized and declared as per s.2 of the *Canadian Bill of Rights* due to infringing of s.1 of the *Canadian Bill of Rights*;
- (g) A declaration that any or all, of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are void for vagueness under s.7 of the *Charter* or otherwise;
- (h) An interim injunction preventing the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order from having any force or effect in Canada until the entirety of the herein proceedings are complete;

- (i) Should the Valentine's Day Declaration, February 15 Regulations and February 15 Economic Order lapse before the herein application is heard, or the *lis* be otherwise *prima facie* moot, an order that the matter proceed in full notwithstanding it is technically moot, on the grounds that the matters in issue are of public importance and their determination is in the public interest. Further, there will remain an adversary context that helps guarantee the issues are well and fully argued by parties who have a stake in the outcome. Further, judicial economy supports it, and hearing the matter is within the Court's proper adjudicative role;
- (j) Costs; and
- (k) Such further and other relief as counsel may advise and this Honourable Court deems just and equitable.

THE GROUNDS FOR THIS APPLICATION ARE:

The Parties

9. The Applicant, Jeremiah Jost, has participated in peaceful protest in and around Parliament Hill in Ottawa since January 29, 2022. He intends to continue protesting at Parliament Hill until all the federal government Covid vaccine mandates are lifted. He has also engaged in financial support of other protest participants in Ottawa, utilizing his bank account to receive and distribute funds.

10. The Applicant, Edward Cornell, is a decorated Canadian military veteran who had his bank account and credit card account searched, seized and frozen on the collective authority of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulation, and February 15 Economic Order.

11. The Applicant, Vincent Gircys, is a retired police officer who had his bank account and credit card account searched, seized and frozen on the collective authority of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulation, and February 15 Economic Order.

12. The Applicant, Reverend Harold Ristau, is a decorated Canadian military veteran and pastor who participated in the peaceful protest in and around Parliament Hill in Ottawa by leading participants in prayer, issuing a benediction and praying near a war memorial.

(hereinafter the “**Applicants**”)

13. The Respondent, the Governor in Council, is the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen’s Privy Council for Canada pursuant to s.35(1) of the *Interpretation Act* RSC 1985, c I-21 (hereinafter the “**GIC**”).

14. The Respondent, Her Majesty the Queen in Right of Canada, is the Crown referred to in the preamble of the *Constitution Act*, 1867, the common law, and s.2 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 (hereinafter the “**Crown**”).

15. The Respondent, the Attorney General of Canada, is the officer and nominee of the Crown which proceedings against the Crown may be taken in the name of, pursuant to s.23(1) of the *Crown Liability and Proceedings Act* (hereinafter the “**AG**”).

16. The Respondent, the Minister of Public Safety and Emergency Preparedness, is the officer and nominee of the Crown which proceedings against the Crown may be taken in the name of, pursuant to s.23(1) of the *Crown Liability and Proceedings Act* (hereinafter the “**Minister**”). The Minister is the Minister responsible for the *Emergencies Act*.

a. The Valentine’s Day Declaration

17. Under provisions of the *Emergencies Act*, the GIC is authorized to take special temporary measures that may not be appropriate in normal times, where safety and security of the individual, the protection of the values of the body politic and the preservation of the sovereignty, security and territorial integrity is seriously threatened by a national emergency. In particular, under s.17 of the *Emergencies Act*, the GIC may by proclamation declare that a “*public order emergency exists*”, but only when the GIC believes on reasonable grounds:

- (a) That a public order emergency exists; and
- (b) That a public order emergency necessitates the taking of special temporary measures for dealing with the emergency.

18. Pursuant to s.16 of the *Emergencies Act*, a “public order emergency” means an emergency that arises from:

(a) “threats to the security of Canada” as defined in s.2 of the *Canadian Security Intelligence Service Act* R.S.C., 1985, c. C-23 and are limited to:

- i. espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
- ii. foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- iii. activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- iv. activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (i) to (iv); and

(b) that is so serious as to be a national emergency.

19. On February 14, 2022 the GIC passed the Valentine’s Day Declaration under s.17(1) of the *Emergencies Act*. As per s.17(2) of the *Emergencies Act*, the Valentine’s Day Declaration is required to specify:

- a. concisely the state of affairs constituting the emergency;
- b. the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and
- c. if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects of the emergency extend.

20. The Valentine's Day Declaration cites the state of affairs constituting the emergency as follows:

- (a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,
- (b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,
- (c) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,
- (d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and
- (e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians;

21. The Valentine's Day Declaration specifies special temporary measures that the GIC anticipates may be necessary for dealing with the emergency the issuing Orders pursuant to section 19(1) of the *Emergencies Act*, including the following:

- (i) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace,

or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure,

(ii) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and to provide reasonable compensation in respect of services so rendered,

(iii) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,

(iv) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference,

(v) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and

(vi) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

(hereinafter collectively referred to as "**Anticipated Measures**" or individually referred to as "**Anticipates Measures (i)**" through **Anticipated Measures (vi)**)

22. The Valentine's Day Declaration specifies that the effects of the emergency extend to the whole of Canada, specifically it states a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency.

23. The Applicants state, and the fact is, the Valentine's Day Declaration is aimed at "blockades"—a term that is not specifically defined, but which are comprised of persons and their property carrying out advocacy, protest or dissent.

24. The Applicants state, and the fact is, that the Valentine's Day Declaration was issued by the GIC without reasonable grounds that public order emergency exists, therefore the Valentine's Day Declaration is *ultra vires* s.17(1) of the *Emergencies Act*. Particularly:

- (a) There are no reasonable grounds that blockades are activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state;
- (b) Adverse effects on the Canadian economy are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*;
- (c) Adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*;
- (d) The breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*; and
- (e) The potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*; and
- (f) There are no reasonable grounds the blockades are "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*.

25. Further, and in the alternative, there are no reasonable grounds the blockades are so serious as to be a national emergency. The Applicants state, and the fact is, in order for there to be a national emergency to issue the Valentine's Day Declaration, it requires there to be reasonable grounds that it can be said to be an urgent and critical situation adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces. The Applicants state, and the fact is, there are not reasonable grounds that the blockades are adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces.

26. The Applicants state, and the fact is, there are no reasonable grounds that the general laws under the *Criminal Code* R.S.C., 1985, c. C-46, and other federal, provincial, and municipal laws are inadequate to address the blockades.

27. In particular, the *Criminal Code* contains offence provisions that permit obtaining of orders from courts of criminal jurisdiction, and arresting subjects, where there are reasonable grounds to believe a person is committing or attempting to commit offences in relation to mischief, treason, sabotage, sedition, riot, unlawful assembly, kidnapping and murder. Further, the *Criminal Code* offences can result in arrest without warrant where there are reasonable grounds. Furthermore, each Province has trespass legislation and emergency management legislation. Furthermore, each municipality have numerous municipal bylaws to deal with blockades, and unlawful demonstrations. The Applicants states, and the fact is, there is simply no reasonable grounds that the *Criminal Code*, and other federal, provincial and municipal laws are or were inadequate to address the blockades.

28. Further, the Applicants state, and the fact is, there are no reasonable and probable grounds that the purported "public order emergency" extends to Canada as a whole. In particular, the blockades have occurred in five geographical finite areas. Particularly, two border crossings between Canada and the United States in Alberta and Ontario respectively, saw blockades spanning several days of duration. The blockade near the Ambassador Bridge in Windsor, Ontario was cleared by provincial and municipal police prior to the issue of the Valentine's Day Declaration. The blockade near Coutts, Alberta was voluntarily ceased by the participants shortly after the Valentine's Day Declaration was issued. Two smaller protests in the vicinity of border crossings near Surrey, British Columbia and Emerson, Manitoba, were resolved after a much shorter duration. The only enduring protest was in the Capital Region

(Ottawa). The Applicants state, and the fact is, there are no reasonable grounds of a national emergency based on same.

29. Further, the Applicants state, and the fact is, that the passing of the Valentine's Day Declaration based on the facts and circumstances herein, deprived the liberty and security interests of the Applicants, and all Canadians, in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice, and therefore violated s.7 of the *Charter*.

30. The Applicants state, and the fact is, the the Anticipated Measures listed in the Valentine's Day Declaration require the GIC to have reasonable and probable grounds those Anticipated Measures may be necessary for dealing with the public order emergency. The Applicants states, and the fact is, there is no such reasonable and probable grounds. Further, the Applicants state the Anticipated Measures are unlawful or unconstitutional. In particular, but not limited to:

- (a) Anticipated Measure (i) has no reasonable and probable grounds for the same reasons as plead regarding the Valentine's Day Declaration itself. Further, and in the alternative, it violates s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Charter* as interpreted in accordance with Articles 2, 4,5, 9, 10(1), 12(1),16, 19, 22(1) and 26 of the *International Covenant of Civil and Political Rights*; Articles 2(2) and 5 of the *International Covenant of Economic and Social Rights*, constitutional principles and international law obligations; and s.1 of the *Canadian Bill of Rights*.
- (b) Anticipated Measure (ii) to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and to provide reasonable compensation in respect of services so rendered is not a statutorily authorized special measure. Further, in the alternative, it violates s.7 of the *Charter* right to liberty by authorising the compulsion of a person to provide a service against their will in a vague,

arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Further, and in the alternative, it violates s.2(b) of the *Charter* right to freedom of expression by compelling a person to engage in activity which will convey, and be understood to convey, a message which is not that person's voluntarily chosen expression. Further, in the alternative, it violates Articles 1(2), 4, 5, 8, 9, and 10(1) of the *International Covenant of Civil and Political Rights* in that it forces a person to carry out work against their will. Furthermore, it infringes of the heads of power of the Provinces in 92(10), 92(13), and 92(16) of the *Constitution Act*, 1867.

- (c) Anticipated Measure (iii) to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade is not a statutory authorized special measure. Further, there was no reasonable grounds for this special measure. Further, it violates s.7 of the *Charter* right to liberty by authorising the compulsion of a person to provide a service against their will in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Furthermore, it violates s.8 of the *Charter* by authorising extra-judicial searches and seizures of bank accounts. Further, an in the alternative, it violates Articles 1(2), 4, 5, 8, 9, 10(1) 16, 17 and 47 of the *International Covenant on Civil and Political Rights* and Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant on Economic, Social and Cultural Rights*.
- (d) Anticipated measure (iv) to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference infringes on the heads of power of the Provinces in 92(10), 92(13), and 92(16) of the *Constitution Act*, 1867.

(e) Anticipated measure (v) to authorize the imposition of fines or imprisonment for contravention of any order or regulation made under s.19 of the *Emergencies Act* violates s.7 and s.9 of the Charter. Further it violates Articles 9 of the *International Covenant on Civil and Political Rights*. Furthermore, it violates s.1 of the *Canadian Bill of Rights*. In the alternative, it violates international law obligations.

31. Further, the Applicants state, and the fact is, that the Valentine's Day Declaration is passed as a mechanism to violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, and s.12 of the *Charter*.

32. Further, the statutory process for confirming the Valentine's Day Declaration pursuant to s. 58(1) and s.58(6) of the *Emergencies Act*, has been violated. The Valentine's Day Declaration must be confirmed by Parliament within seven sitting days after it has been issued and debated without interruption. The suspension of Parliament on February 19, 2022 is an abuse of process, contrary to the *Emergencies Act* provisions and *ultra vires*, and the Valentine's Day Declaration as confirmed by Parliament on February 21, 2022 is *void ab initio*.

b. February 15 Regulations

33. Pursuant to the Valentine's Day Declaration and s.19(1) of the *Emergencies Act* and on the recommendation of the Minister, the GIC annexed the February 15 Regulations on the belief that there were reasonable grounds that the regulation or prohibition of public assemblies was necessary.

34. Sections 2 to 5 of the February 15 Regulations outlines the 'prohibited activities' associated with public assembly for which any peace officer may take necessary measures to ensure compliance and allow for the prosecution for failure to comply.

35. Section 2(1) prohibits participation in a public assembly that may be reasonably expected to lead to a breach of the peace by:

(a) the serious disruption of the movement of persons or goods or the serious interference with trade;

(b) the interference with the functioning of critical infrastructure; or

(c) the support of the threat or use of acts of serious violence against persons or property.

(hereinafter “**s.2 public assembly**”)

36. Section 2(2) prohibits causing a minor to participate in a s.2 public assembly.

37. Section 3 prohibits a foreign national from entering Canada with the intent to participate in a s.2 public assembly.

38. ‘Foreign National’ has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act* “means a person who is not a Canadian citizen or a permanent resident and includes a stateless person.”

39. Section 4(1) prohibits travel of anyone to or within an area where a s.2 public assembly is taking place.

40. Section 4(2) prohibits causing a minor to travel to or within 500 meters of an area where a s.2 public assembly is taking place.

41. Section 5 prohibits anyone from directly or indirectly providing property to facilitate or participate in a s.2 public assembly for the purpose of benefiting any person who is facilitating or participating in such a public assembly. This provision extends to anyone using, collecting, providing, making available or inviting any person for same.

42. Section 6 authorizes the designation of places to be protected and secured. These places are public places and range from the Parliament Hill, any government building, monuments, cemeteries, airports, railway stations, bus stations, ports, hospitals, trade corridors and international border crossings, to ‘any other place’ the Minister designates as protected.

43. Section 6 does not provide reasons for why places are to be designed as protected and to be secured. It reads as generally prohibiting access of areas from anyone on a vague and arbitrary basis.

44. Sections 7 and 8 authorize the Minister, the Commissioner of the Royal Canadian Mounted Police or any person acting on their behalf to compel anyone on a written request and to immediately on a request to remove, tow and store any vehicle, equipment, structure or object that is part of a "blockade".

45. Section 9(2) provides that anyone that suffers loss, injury or damage as a result of anything done under the February 15 Regulations may make an application for compensation in accordance with Part V of the *Emergencies Act*. At s.47(1) of Part V of the *Emergencies Act* it prevents action and proceedings for damages against a Minister, servant or agent of the Crown and any person providing services pursuant to orders and regulations made pursuant to s.19(1) of the *Emergencies Act*. Furthermore, s.48(2) includes a waiver of liability in that no compensation shall be paid to anyone unless they sign a release of any right of action.

46. Section 10 creates penalties for failure to comply with the February 15 Regulations and provides powers to peace officers to the extent that any police officer, police constable, constable, or other person employed for the preservation and maintenance of the public peace which can include the Royal Canadian Military Police, may take any necessary measures to ensure compliance with the February 15 Regulations and with any provincial or municipal laws and allows for the prosecution for the failure to comply. The penalties as per s.10(2) include:

- (a) on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or
- (b) on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years or to both."

47. The Applicants state, and the fact is, that the passing of the February 15 Regulations based on the facts and circumstances herein, deprived the liberty and security interests of the Applicants, and all Canadians, in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice, and therefore violated s.7 of the *Charter*.

48. The Applicants state, and the fact is, the regulation and prohibition of public assemblies in the areas referred to in the February 15 Regulations require the GIC to have reasonable and probable grounds the provisions in the February 15 Regulations are necessary for dealing with the public order emergency. In particular, but not limited to:

- (a) There are no reasonable grounds for the Prohibited Activities in sections 2 to 5 of the February 15 Regulations for the same reasons as plead regarding the Valentine's Day Declaration itself. Further, in the alternative, they violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8 and s.15 of the *Charter*; s.1 of the *Canadian Bill of Rights*; Articles 2, 4, 5, 8, 19, 10(1), 12(1), 16, 17, 19, 22(1) and 26 of the *International Covenant of Civil and Political Rights*; Articles 1(2), 2(2), 3, 4, 5, 11(1) and 25 of the *International Covenant of Economic and Social Rights*; constitutional principles and international law obligations.
- (b) The Designation of Protected Places as per section 6 of the February 15 Regulations is an abuse of state powers to secure and restrict access to public locations by using force, peace officers including Royal Canadian Mounted Police, police dogs, and intimidation tactics. Further, in the alternative, it violates s.7 of the *Charter* right to liberty and personal security by authorising the designation of any area as protected and to secure those areas by force in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Furthermore, it violates Articles 9, 10(1), 12 (1) and 18 of the *International Covenant on Civil and Political Rights* by depriving anyone from the conditions for every human being to enjoy civil and political freedom and freedom from fear.
- (c) The Directions on Essential Goods and Services outlined in sections 7 and 8 of the February 15 Regulations directing any person to render essential services to relieve the impacts of the blockade, including measures to regulate or to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, is not a statutory authorized special

measure and is *ultra vires*. Further, in the alternative, it violates s.7 of the *Charter* right to liberty by authorising the compulsion of a person to provide a service against their will in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Further, in the alternative, it violates s.2 of the *Charter* right to freedom of expression by compelling a person to engage in activity which will convey, and be understood to convey, a message which is not that person's voluntarily chosen expression. Further, in the alternative, it violates Articles 1(2), 2, 4, 5, 8, 9, 10(1), 12(1), 16, 17, 19 and 47 of the *International Covenant of Civil and Political Rights* in that it forces a person to carry out work against their will with criminal penalties for non-compliance. Further, in the alternative, it violates Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant on Economic, Social and Cultural Rights*.

- (d) The powers granted to peace officers in s.10 of the February 15 Regulations, including authorising the Royal Canadian Mounted Police to enforce compliance with the February 15 Regulations and with any municipal and provincial laws and allow for the prosecution of failure to comply infringes of the heads of power of the Provinces in 92(10), 92(13), and 92(16) of the *Constitution Act*, 1867 and constitutional principles. Furthermore, the penalties for failure to comply with vague and arbitrary provisions in the February 15 Regulations violates s.9 and s.12 of the *Charter*; s.1 of the *Canadian Bill of Rights*; Articles 7, 9, and 10(1) of the *International Covenant of Civil and Political Rights*; and international law obligations.

49. Further, the Applicants state, and the fact is, that the February 15 Regulations is passed as a mechanism to violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Charter*.

50. Further, the February 15 Regulations are *ultra vires* s. 91 of the *Constitution Act*, 1867, and the constitutional principles underlying written provisions of the Constitution of Canada.

c. February 15 Economic Order

51. Pursuant to the Valentine's Day Declaration and s.19(1) of the *Emergencies Act* and on the recommendation of the Minister, the GIC annexed the February 15 Economic Order on the belief that there were reasonable grounds that measures regarding property referred to therein are necessary. The February 15 Economic Order contains provisions that are tied to the February 15 Regulations.

52. The February 15 Economic Order applies to any individual or entity, including a corporation, trust, partnership, fund, unincorporated association or organization, or foreign state, that is engaged directly or indirectly in a s.2 public assembly.

53. The February 15 Economic Order force stops the provision of any financial services, insurance coverage, access to capital assets, digital assets, donations, and fundraising platform funds to anyone or entity indirectly or directly involved in a s.2 public assembly and any of the prohibited activities listed in sections 2 to 5 of the February 15 Regulations.

54. Section 2(1) requires that the following entities freeze accounts and access to assets belonging to anyone that owns, holds, or controls on behalf of anyone or entity directly or indirectly involved in any of the prohibited activities in relation to a s.2 public assembly: banks, including foreign banks as per the *Bank Act*; cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*; insurance companies, including foreign insurance companies as per the *Insurance Companies Act* and other insurance companies regulated by a provincial Act; trust and fund companies as regulated the *Trust and Loan Companies Act* or as regulated by a provincial Act; loan companies as regulated by a provincial Act; entities that fall under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*; securities companies, portfolio management, investment and counselling services companies as per provincial legislation; fundraising platforms; virtual currency platforms; and electronic payment companies (hereinafter "**financial services entities**").

55. Furthermore, s.2(1) compels the financial services entities from February 15, 2022 to continuously monitor all financial activities of every customer in order to determine whether

any transaction or asset is tied to a person or entity directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly.

56. Section 4(1) compels all financial services entities not regulated by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, specifically fundraising platforms, virtual currency platforms and electronic payment companies (hereinafter the “**unregulated financial sector**”) to register with the Financial Transactions and Reports Analysis Centre of Canada (hereinafter “**FINTRAC**”) if they are in possession or control of property that is owned, held or controlled by or on behalf of a person or entity that is directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly. Furthermore, s.4(2) compels the unregulated financial sector to report to FINTRAC, any suspicious transaction on reasonable grounds and linked to any person or entity directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly. A suspicious transaction means a transaction related to a money laundering offence or a terrorist activity financing offence.

57. Section 4(3) further extends the breadth of reporting obligations for the unregulated financial sector by compelling sharing information with FINTRAC pursuant to s.30(1) and s.33(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

58. Section 30(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* set out reporting requirements for ‘money services business and foreign money services business’ for transactions of \$10,000 or more. Section 33(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* has been repealed and replaced with s.28 which refers to securities dealers that they must keep a virtual currency transaction record for any transaction of \$10,000 or more in virtual currency.

59. Section 5 compels all financial services entities, including the unregulated financial sector, to immediately disclose to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service any information with regards to transactions and property owned, held or controlled by or on behalf of a person or entity directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly and any information regarding related transactions. Similarly, s.6 authorizes any exchange information from the Government of Canada, provincial or territorial.

60. Section 6 provides full immunity of all financial services entities against civil proceedings or any proceedings under the *Emergencies Act*. This in fact means that there is full impunity from legal action and no recourse to remedies pursuant to Part V of the *Emergencies Act*.

61. The Applicants state, and the fact is, that the passing of the February 15 Economic Order based on the facts and circumstances herein, deprived the liberty and security interests of the Applicants, and all Canadians, in in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice, and therefore violated s.7 of the *Charter*.

62. The Applicants state, and the fact is, the measures regarding property referred to in the February 15 Economic Order require the GIC to have reasonable and probable grounds that the measures are necessary for dealing with the public order emergency. In particular, but not limited to:

- (a) Interferences with personal property pursuant to s. 2 of the February 15 Economic Order have no reasonable and probable grounds for the same reasons as plead regarding the Valentine's Day Declaration itself. Further, in the alternative, they violate s. s.8 of the *Charter* and cannot be demonstrably justified in a free and democratic society, pursuant to s.1 of the *Charter*. Further, they violate s.1 of the *Canadian Bill of Rights* in that ever person has the right to enjoyment of property and the right no to be deprived thereof except by due process of the law. Further, they violate Articles 1(2), 4, 5, 16,17, 26 and 47 of the *International Covenant of Civil and Political and* Articles 1(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant of Economic and Social Rights* in that the freezing and removal of access to personal property *inter alia* personal bank account, funds, capital, capital assets and digital assets is unlawful interference with a person's right to privacy and violates the inherent right of all peoples to enjoy and utilize fully and freely their wealth and resources. Furthermore, it violates *International Covenant on Civil and Political Rights* by depriving anyone from the conditions for every human being to enjoy civil and political freedom and freedom from fear. Further, these inferences

are inconsistent with constitutional principles, specifically rule of law and contractual expectations and international law obligations.

(b) Compelling the unregulated financial sector to register with FINTRAC and report suspicious transaction and share information in the same manner as regulated financial services do per the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* pursuant to s.4 of the February 15 Economic Order unlawfully delegates the powers of the Parliament to legislate to the Executive and violates s.91 of the *Constitution Act*, 1987 and the *Statutory Instruments Act* R.S.C., 1985, c. S-22 by infringing on the jurisdiction of Parliament stated herein. Further the delegation of Parliament's jurisdiction is inconsistent with constitutional principles, namely parliamentary sovereignty, separation of powers, and rule of law.

(c) Compelling all financial services entities to disclose information to the Royal Canadian Mounted Police and the Canadian Security Intelligence Service goes beyond the scope of the *Emergencies Act* and undermines the principle of constitutionalism.

63. Further, the Applicants state, and the fact is, that the February 15 Economic Order is passed as a mechanism to violate s.8 of the *Charter* and s.1 of the *Canadian Bill of Rights*.

64. Further, the February 15 Economic Order deprived the Applicants, and all Canadians, of their fundamental rights to not be limited or abridged even in a national emergency is not in conformity of the preamble in the *Emergencies Act*, and therefore violated the *Canadian Bill of Rights*, the *International Covenant on Civil and Political Rights* and international law obligations.

65. Further, the February 15 Economic Order is *ultra vires* the *Emergencies Act* and violates the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5.

d. Emergencies Act

66. The invocation of the *Emergencies Act* for the first time in Canadian history has demonstrated that it is not fit for purpose in a parliamentary democracy and has failed the test for compliance with the *Canadian Constitution Act, 1982*, the *Canadian Constitution Act, 1987* and the *Charter*.

67. The Applicants state, and the fact is, the *Emergencies Act's* purpose was to prevent the abuses of civil liberties that had taken place under the *War Measures Act*. The Applicants state that the term "temporary special measures" throughout the *Emergencies Act* is void for vagueness under s.7 of the *Charter*.

The Applicants rely on the following statutory provisions, rules and principles:

68. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

69. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

70. *Constitution Act, 1867*, 30 & 31 Vict, c 3.

71. *Canadian Bill of Rights* S.C. 1960, c. 44.

72. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

73. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

74. *Interpretation Act* RSC 1985, c I-21.

75. *Statutory Instruments Act* R.S.C., 1985, c. S-22.

76. *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5.

77. *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1.

78. *Federal Courts Rules*. SOR/98-106.

This Application will be supported by the following material:

79. Affidavit of Jeremiah Jost, to be filed;

80. Affidavit of Edward Cornell, to be filed;

81. Affidavit of Vincent Gircys, to be filed;

82. Affidavit of Harold Ristau, to be filed; and

83. Such further and other affidavits and material as counsel may advise and this Honourable Court permits.

Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicants request that the Respondents send the following material that is not in the possession of the Applicants but is in the Respondent's possession, to the Applicants and to the Registry:

84. The record of all documents and other materials before the GIC informing the Decision.

85. Such further and other material that may be in the possession, power or control of the Respondents and which may be relevant to these proceedings.

Date: February 23, 2022



Brendan M. Miller
Foster LLP
2100, 528 – 5th Avenue SW
Calgary, AB T2P 3R7



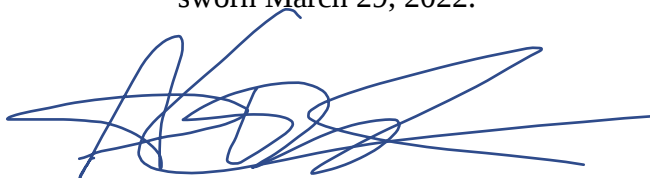
Blair Ector
Ector Law
200, 3015 – 12 Street NE
Calgary, AB T2E 7J2



Bath-Sheba van den Berg
Foster LLP
2100, 528 – 5th Avenue SW
Calgary, AB T2P 3R7



This is Exhibit "E" to the Affidavit of Simon Sigler
sworn March 29, 2022.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Commissioner for Taking Affidavits (or as may be)



Toronto Office:
 441 Jarvis Street, Toronto, ON M4Y 2G8
 Tel: 416-546-2125
 Fax: 416-546-2104
 E-mail: alehner@johnstonecowling.com

London Office:
 284 Dundas Street, 3rd Floor, London, ON N6B 1T6
 Tel.: 226-663-2427
 Fax: 226-663-4610

March 11, 2022

Attn: Mr. John Provart

The Attorney General of Canada
 Ontario Regional Office
 Department of Justice Canada
 National Litigation Sector
 120 Adelaide Street West, Suite 400
 Toronto, Ontario M5H 1T1

Attn: Justice Mosley &

Prothonotary Milczynski

C/O Judicial Administrator
 Federal Court - Ottawa
 Thomas D'Arcy McGee Building
 90 Sparks Street, 5th Floor
 Ottawa, ON K1A 0H9

Dear Mr. Provart and Your Honours:

**Re: Canadian Frontline Nurses and Kristen Nagle v. Attorney General of Canada
 Court File No. T-306-22**

We write with respect to the upcoming Case Management meeting to be held at 10:00 AM today, Friday, March 11, 2022.

Timetable and the Attorney General of Canada's Proposed Motions to Strike

It is our position that the Attorney General of Canada ought to deliver a response to the T-306-22 Applicants' Rule 317 request within 20 days of the February 23, 2022 case management teleconference before Prothonotary Milczynski (i.e. by Tuesday, March 15, 2022) and deliver their Rule 307 evidence within 30 days of the date of service of the Applicants affidavits (i.e. by Monday, April 4, 2022) in accordance with the Court's direction of February 23, 2022.

Applications for judicial review are to be heard and determined without delay and in a summary way.¹ The Attorney General of Canada's proposal to hold the production of the Rule 317 record and the Rule 307 affidavits in abeyance is not consistent with this principle. The Respondent's proposed motions to strike will unduly and unnecessarily delay the expeditious determination of the applications.

¹*Federal Courts Act*, RSC 1985, c F-7, s 18.4(1)

We agree with the position of the Applicants in the *Jeremiah Jost et. al. v. Governor in Council et. al.* matter (Court File No. T-382-22) set out in Mr. Miller's letter dated March 10, 2022. We add that Ms. Nagle and Canadian Frontline Nurses were also directly affected by the Public Order Emergency Proclamation (P.C. 2022-106), the *Emergency Measures Regulations* (P.C. 2022-107), and the *Emergency Economic Measures Order* (P.C. 2022-108). It is our position that our clients, like the applicants in T-382-22, also have personal standing.

Standing is asserted whenever a party applies for judicial review. The *Federal Courts Rules* do not require a party asserting personal or public standing to prove it on a preliminary motion.² Issues relating standing should be heard with the merits of the case. Courts should only entertain preliminary motions relating to lack of standing in very clear cases.³ This is not one of such cases.

Amended Notice of Application

We attach a copy of our proposed Amended Notice of Application. The amendments seek to make the Notice of Application accord with the issues to be determined at the hearing, including the issues raised in our Notice of Constitutional Question, previously served.

We intend to raise the proposed Amended Notice of Application at today's hearing to determine whether the amendment can be ordered pursuant to Rule 385(1)(a) or if a motion under Rule 75 of the *Federal Courts Rules* is required.

Yours very truly,

Johnstone & Cowling LLP



Alexander Boissonneau-Lehner
Encl.

cc. Counsel for the Applicants in T-316-22, T-347-22, and T-382-22

² [Y.Z. v. Canada \(Citizenship and Immigration\)](#), 2015 FC 892 (CanLII), [2016] 1 FCR 575, at paras 36-37

³ [Apotex Inc. v. Canada \(Governor in Council\)](#), 2007 FCA 374 (CanLII), at para 13.

This is Exhibit "F" to the Affidavit of Simon Sigler
sworn March 29, 2022.

A handwritten signature in blue ink, appearing to be 'Simon Sigler', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Subject: T-306-22, T-316-22, T-347-22, and T-382-22 Direction 11-MAR-2022

Date: Friday, March 11, 2022 at 3:57:53 PM Eastern Standard Time

From: Murray, Andrew

To: Simon Sigler, Alexander Boissonneau-Lehner, 'Shain.Widdifield@justice.gc.ca', 'John.provart@justice.gc.ca', 'Flaim, Roger', 'ayasha.laldin@justice.gc.ca', 'james.schneider@justice.gc.ca', 'Coleman, Rebecca', David Cowling, 'Ewa Krajewska', 'mgourlay@hhllp.ca', 'Sujit Choudhry', 'bsvandenbergh@fosterllp.ca', 'bmiller@fosterllp.ca', 'Kohlman, Kathleen', 'janani@gslp.ca', 'blair@ectorlaw.com'

CC: Nelson, Shaun

Good Afternoon Counsel,

Please find below a copy of an oral direction from Prothonotary Milczynski in regards to the above noted file. I would kindly request each party please reply and confirm receipt.

“Further to the case management teleconference conducted this day:

- the Respondent shall deliver the Record and any objections to applicable Rule 317 requests by March 15, 2022;
- applicable Applicants’ position to the above shall be delivered and submitted by March 18, 2022;
- Respondent’s Rule 307 affidavit(s) to be served and filed by April 4, 2022;
- cross examinations to be completed by April 29, 2022
- Applicants’ Application Records to be filed by May 20, 2022; and
- Respondent’s Application Record(s) to be filed by June 20, 2022.

The hearing of the applications and any preliminary motions are scheduled to commence by zoom on June 28, 2022 for a maximum of 3 days.

The Court acknowledges the request/discussion on the call to possibly schedule the hearing in July, which will be further discussed on the next case management teleconference, which is scheduled for April 11, 2022 at 11am (ET).

With respect to the preliminary motions (standing/mootness), although not confirmed on the cmc, the Court proposes that the Respondent file its motion record no later than May 20, 2022 and the Applicant’s file their responding motion records by June 20, 2022.

This matter will be addressed/confirmed on the April 11 case management teleconference.

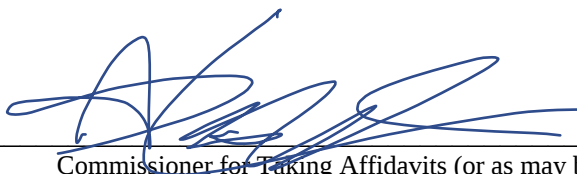
With respect to the proposed amendments to the notice of application in T-306-22, the parties in that file shall advise as soon as practicable whether a motion is required.

The Court also notes the advice of the Attorney General of Alberta of their intention to file a motion for intervener status on non- constitutional issues by April 14, 2022. The motion will be filed pursuant to Rule 369 of the Federal Courts Rules, to be dealt with in writing.

A joint case management teleconference, with the hearing judge, is scheduled for May 25, 2022 at 11am (ET).”

Regards,
Andrew Murray
Registry Officer

This is Exhibit "G" to the Affidavit of Simon Sigler
sworn March 29, 2022.

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by several loops and a long horizontal stroke.

Commissioner for Taking Affidavits (or as may be)

Subject: Re: T-306-22: Canadian Frontline Nurses v. AGC, Response to Rule 317 Request
Date: Tuesday, March 15, 2022 at 4:01:43 PM Eastern Daylight Time
From: Alexander Boissonneau-Lehner
To: Coleman, Rebecca, Widdifield, Shain, Anderson, R. Jeff, Provart, John
CC: David Cowling, Simon Sigler
Attachments: image001.png

Thank you Ms. Coleman.

Further to Prothonotary Milczynski's direction of March 11, 2022, would you or your colleagues please advise us of the Attorney General of Canada's position with respect to our proposed amendments to the Notice of Application?

Kind regards,
 Alex

Alexander Boissonneau-Lehner
 Lawyer

Toronto Office: 441 Jarvis Street, Toronto, Ontario M4Y 2G8

London Office: 284 Dundas Street, 3rd Floor, London, Ontario N6B 1T6

Tel: 416-546-2125

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From: "Coleman, Rebecca" <Rebecca.Coleman@justice.gc.ca>

Date: Tuesday, March 15, 2022 at 3:39 PM

To: Alexander Boissonneau-Lehner <alehner@johnstonecowling.com>, David Cowling <dcowling@johnstonecowling.com>, Simon Sigler <ssigler@johnstonecowling.com>

Cc: "Provart, John" <John.Provart@justice.gc.ca>, "Anderson, R. Jeff" <Jeff.Anderson@justice.gc.ca>, "Widdifield, Shain" <Shain.Widdifield@justice.gc.ca>

Subject: T-306-22: Canadian Frontline Nurses v. AGC, Response to Rule 317 Request

Good afternoon counsel,

Pursuant to the Oral Direction from Prothonotary Milczynski dated March 11, 2022, please find attached the Respondent's Rule 318 Response to the Applicant's Rule 317 Request.

Regards,

Rebecca Coleman (*she/elle*)

Senior Paralegal – Supervisor (Litigation) |
Parajuriste principal – superviseur (contentieux)
National Litigation Sector | Secteur national du contentieux
Department of Justice | Ministère de la Justice
Ontario Regional Office | Bureau régional de l'Ontario
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1
Tel. | tél: (647) 261-9106
rebecca.coleman@justice.gc.ca

Government of Canada | Gouvernement du Canada

This is Exhibit "H" to the Affidavit of Simon Sigler
sworn March 29, 2022.

A handwritten signature in blue ink, appearing to be "Simon Sigler", written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Subject: RE: T-306-22: Canadian Frontline Nurses v. AGC, Response to Rule 317 Request
Date: Wednesday, March 16, 2022 at 10:41:29 AM Eastern Daylight Time
From: Anderson, R. Jeff
To: Alexander Boissonneau-Lehner, Coleman, Rebecca, Widdifield, Shain, Provart, John
CC: David Cowling, Simon Sigler
Attachments: image001.png

Hello Alex

Thanks for your email. We hope to have a response by this coming Friday or next Monday, March 21, 2022 at the latest.

Jeff A.

R. Jeff Anderson

General Counsel, Civil Litigation Section Department of Justice/National Litigation Sector/Government of Canada

532-50 O'Connor St. Ottawa, Ontario. K1A 0H8 R.Jeff.Anderson@Justice.gc.ca / Tel: 613-670-6259 / cell: 613 296-0739/Fax: 613 954-1920

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From: Alexander Boissonneau-Lehner <alehner@johnstonecowling.com>

Sent: March 15, 2022 4:02 PM

To: Coleman, Rebecca <Rebecca.Coleman@justice.gc.ca>; Widdifield, Shain <Shain.Widdifield@justice.gc.ca>; Anderson, R. Jeff <Jeff.Anderson@justice.gc.ca>; Provart, John <John.Provart@justice.gc.ca>

Cc: David Cowling <dcowling@johnstonecowling.com>; Simon Sigler <ssigler@johnstonecowling.com>

Subject: Re: T-306-22: Canadian Frontline Nurses v. AGC, Response to Rule 317 Request

Thank you Ms. Coleman.

Further to Prothonotary Milczynski's direction of March 11, 2022, would you or your colleagues please advise us of the Attorney General of Canada's position with respect to our proposed amendments to the Notice of Application?

Kind regards,
Alex

Alexander Boissonneau-Lehner
Lawyer

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From: "Coleman, Rebecca" <Rebecca.Coleman@justice.gc.ca>

Date: Tuesday, March 15, 2022 at 3:39 PM

To: Alexander Boissonneau-Lehner <alehner@johnstonecowling.com>, David Cowling <dcowling@johnstonecowling.com>, Simon Sigler <ssigler@johnstonecowling.com>

Cc: "Provart, John" <John.Provart@justice.gc.ca>, "Anderson, R. Jeff" <Jeff.Anderson@justice.gc.ca>, "Widdifield, Shain" <Shain.Widdifield@justice.gc.ca>

Subject: T-306-22: Canadian Frontline Nurses v. AGC, Response to Rule 317 Request

Good afternoon counsel,

Pursuant to the Oral Direction from Prothonotary Milczynski dated March 11, 2022, please find attached the Respondent's Rule 318 Response to the Applicant's Rule 317 Request.

Regards,

Rebecca Coleman (she/elle)

Senior Paralegal – Supervisor (Litigation) |

Parajuriste principal – superviseur (contentieux)

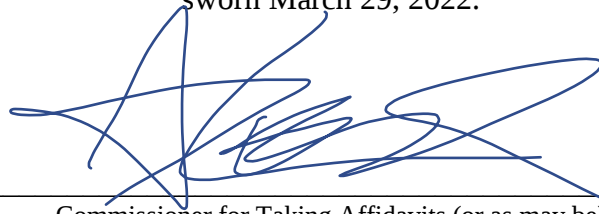
National Litigation Sector | Secteur national du contentieux

Department of Justice | Ministère de la Justice

Ontario Regional Office | Bureau régional de l'Ontario
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1
Tel. | tél: (647) 261-9106
rebecca.coleman@justice.gc.ca

Government of Canada | Gouvernement du Canada

This is Exhibit "I" to the Affidavit of Simon Sigler
sworn March 29, 2022.

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Subject: RE: T-306-22: Canadian Frontline Nurses v. AGC, Response to Rule 317 Request
Date: Monday, March 21, 2022 at 9:21:15 AM Eastern Daylight Time
From: Anderson, R. Jeff
To: Alexander Boissonneau-Lehner, Coleman, Rebecca, Widdifield, Shain, Provart, John
CC: David Cowling, Simon Sigler
Attachments: image001.png

Hello Alex,

Further to my e-mail on this point last week, I write to advise that Canada will **not** consent to the applicants' proposed Amended Notice of Application.

Thanks for your patience in this matter.

Have a good day.

Jeff

R. Jeff Anderson

General Counsel, Civil Litigation Section Department of Justice/National Litigation Sector/Government of Canada

532-50 O'Connor St. Ottawa, Ontario. K1A 0H8 R.Jeff.Anderson@Justice.gc.ca / Tel: 613-670-6259 / cell: 613 296-0739/Fax: 613 954-1920

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From: Alexander Boissonneau-Lehner <alehner@johnstonecowling.com>

Sent: March 15, 2022 4:02 PM

To: Coleman, Rebecca <Rebecca.Coleman@justice.gc.ca>; Widdifield, Shain <Shain.Widdifield@justice.gc.ca>; Anderson, R. Jeff <Jeff.Anderson@justice.gc.ca>; Provart, John <John.Provart@justice.gc.ca>
Cc: David Cowling <dcowling@johnstonecowling.com>; Simon Sigler <ssigler@johnstonecowling.com>
Subject: Re: T-306-22: Canadian Frontline Nurses v. AGC, Response to Rule 317 Request

Thank you Ms. Coleman.

Further to Prothonotary Milczynski's direction of March 11, 2022, would you or your colleagues please advise us of the Attorney General of Canada's position with respect to our proposed amendments to the Notice of Application?

Kind regards,
 Alex

Alexander Boissonneau-Lehner
 Lawyer

Toronto Office: 441 Jarvis Street, Toronto, Ontario M4Y 2G8

London Office: 284 Dundas Street, 3rd Floor, London, Ontario N6B 1T6

Tel: 416-546-2125

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Subject: T-306-22: Canadian Frontline Nurses v. AGC, Response to Rule 317 Request

Good afternoon counsel,

Pursuant to the Oral Direction from Prothonotary Milczynski dated March 11, 2022, please find attached the Respondent's Rule 318 Response to the Applicant's Rule 317 Request.

Regards,

Rebecca Coleman (*she/elle*)

Senior Paralegal – Supervisor (Litigation) |
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Government of Canada | Gouvernement du Canada

Court File No.: T-306-22

FEDERAL COURT

BETWEEN:

CANADIAN FRONTLINE NURSES and KRISTEN NAGLE

Applicants/Moving Parties

and

ATTORNEY GENERAL OF CANADA

Respondent/Responding Party

WRITTEN REPRESENTATIONS OF THE APPLICANTS***Overview***

1. The Applicants seek to amend their Notice of Application. The Respondent opposes the relief sought on this motion.

Facts

2. The proposed amendments seek to bring the Notice of Application in line with the Notice of Constitutional Question that the Applicants served the day after the Notice of Application was served and filed.
3. The proposed amendments also seek to make it clear that the Applicants are also relying upon section 2 of the *Canadian Bill of Rights*. The proposed amendments also puts the Respondent on notice that the Applicants seek to rely upon the *Interpretations Act*. The

balance of the amendments are minor housekeeping matters (e.g. particularizing the affidavits to be relied upon now that they have been filed).

Issues

4. The issues are whether the Applicants should be permitted to amend their Notice of Application and the costs of this motion.

Submissions

5. Rule 3 of the *Federal Court Rules* provides as follows:

3 These Rules shall be interpreted and applied

(a) so as to secure the just, most expeditious and least expensive outcome of every proceeding; and

(b) with consideration being given to the principle of proportionality, including consideration of the proceeding's complexity, the importance of the issues involved and the amount in dispute.

6. Rule 75 of the *Federal Court Rules* provides as follows:

75 (1) Subject to subsection (2) and rule 76, the Court may, on motion, at any time, allow a party to amend a document, on such terms as will protect the rights of all parties.

7. Rule 75(1) applies to all proceedings, including applications.¹

8. This Court should take a generous approach to a request for an amendment.² Amendments ought to be granted at any stage of the action if it assists in determining the real questions

¹ *AstraZeneca AB v. Apotex Inc.*, 2006 FC 7 (CanLII), at para 19.

² *Fox Lake Indian Band v. Reid Crowthers & Partners Ltd.*, 2002 FCT 630 (CanLII), [2003] 1 FC 197, at para 9.

in controversy between the parties, provided it would not result in an injustice to the party not capable of being compensated by an award of costs.³

9. The amendments sought by the Applicants seek to deal with the questions in controversy that are set out in the Applicant's Notice of Constitutional Question, served one day after the original Notice of Application was delivered to the Respondent. The *Charter* grounds raised, section 2 of the *Canadian Bill of Rights*, and the reliance upon the *Interpretations Act* are also covered by the Notices of Applications in T-316-22, T-347-22 and T-382-22. These three matters are presently scheduled to be heard consecutively or concurrently with Canadian Frontline Nurses and Kristen Nagle's Application for Judicial Review.

10. The issues relating to the *Interpretation Act* and the other *Charter* and *Canadian Bill of Rights* sections set out in the proposed amendments, and their impact of the *Emergencies Act* proclamation, the regulations, and the order, will be addressed by the other parties at the merits hearing in any event. The Applicants merely seek the opportunity to make submissions on these issues as they relate to them.

11. Although the Respondent has had notice of the *Charter* grounds the Applicants intend to raise by virtue of their Notice of Constitutional Question, the Applicants may not be able to raise *Charter* arguments if they are not set out in the Notice of Application. As Canadian Frontline Nurses and Kristen Nagle wish to raise the *Charter* grounds and have the ability

³ *Canada v. Pomeroy Acquireco Ltd.*, 2021 FCA 187 (CanLII), at para [4](#).

to make arguments with respect to same, it is incumbent on them to amend their Notice of Application.⁴

12. The amendments sought will not result in an injustice to the Respondent. The Application is still at an early stage. The Respondent is still awaiting confirmation from the Clerk of the Privy Council before it delivers its proper Rule 318 record and/or objections to the Applicants' Rule 317 request. The Respondent has not delivered its Rule 307 evidence at the time of this motion. Cross-examinations have not yet occurred.

13. The Applicants sought the Respondent's consent for the amendments. This motion should not have been opposed. This motion would have been unnecessarily had the Respondent agreed to the proposed amendments. Forcing the Applicants to bring this motion is inconsistent with securing the most expeditious, least expensive, and just outcome of this proceeding. This should be considered in the determination of costs.⁵

Order Requested

14. The Applicants seek an Order:

(a) Granting leave to amend the Notice of Application to be amended in the form set out in Schedule "A" to the Notice of Motion; and

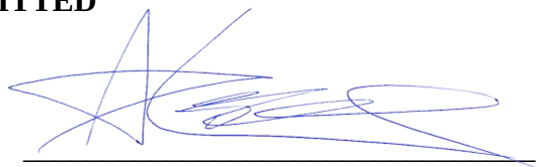
(b) Granting their costs of this motion.

⁴ *Filizola v. Canada (Attorney General)*, 2021 FC 1368 (CanLII), at paras [40-41](#).

⁵ *Federal Courts Rules*, SOR/98-106, [Rule 400\(3\)\(k\)](#); *Rallysport Direct LLC v. 2424508 Ontario Ltd.*, 2020 FC 1115 (CanLII), at para [14](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 29th day of March, 2022



Alexander Boissonneau-Lehner

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Toronto, Ontario

M4Y 2G8

Tel: 416-546-2103

Fax: 416-546-2104

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Solicitors for the Applicants/Moving Parties